

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 15, 1983

Otto Bloch
86-97 Marengo Ave.
Holliswood, NY 11423

Dear Mr. Bloch:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
M. Joseph Levin
Gering, Gross and Gross, Esqs.
86-26 Queens Blvd.
Elmhurst, NY 11373
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
OTTO BLOCH	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Period September 1,	:	
1975 through August 31, 1976.	:	

Petitioner, Otto Bloch, 86-97 Marengo Avenue, Holliswood, New York 11423, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1975 through August 31, 1976. (File No. 25048).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 19, 1982 at 9:30 A.M. Petitioner appeared by Gering, Gross and Gross, Esqs. (M. Joseph Levin, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect sales tax within the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law.

FINDINGS OF FACT

1. On November 29, 1977, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Otto Bloch, followed by four additional notices issued as follows:

<u>Date</u>	<u>Period</u>	<u>Tax Due</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
11/29/77	3/1/76-11/30/76	\$13,805.28	\$4,817.43	\$	\$18,622.71
5/5/78	9/1/77-11/30/77	11,715.36	1,054.38	585.77	13,355.51
5/9/78	9/1/75-2/7/77	20,005.36	4,466.58	3,800.53	28,272.47
12/20/78	1/1/75-8/31/76	2,032.48	573.10	1,496.65	4,102.23
10/1/79	12/1/76-2/28/77	4,000.00	1,000.00	1,214.44	6,214.44

2. There was overlapping of periods in the aforesaid assessments because: on audit, the auditor found that some of the sales tax returns for Goblos Food Corp. had been filed without remittances; additionally, the auditors discovered that the sales reported did not agree with sales per ledger and they increased sales accordingly; later, the auditors found that the sales per ledger did not agree with the Federal income tax returns and sales were again adjusted accordingly.

3. Petitioner was an officer, director, manager and employee of Goblos Food Corp. ("Goblos") which operated a fast food business. At a pre-hearing conference petitioner demonstrated that after August 10, 1976 he was no longer an officer or employee of Goblos and the assessment against him was reduced to \$13,906.48.

4. Petitioner was vice-president of Goblos. His responsibilities included buying supplies, ordering merchandise, and supervising employees in the operation of the business. Petitioner was a required signatory on all corporate checks along with the president, Kelman Goldberg. Petitioner collected the money from the cash registers each day and gave it to Mr. Goldberg. Petitioner testified that sales tax was included in the sales price and a sign was posted to that effect. Kelman Goldberg handled the financial aspects of the operation including signing and filing all sales tax returns. The books and records of Goblos were not readily available to petitioner.

5. Petitioner maintained that because he did not have access to the books and records of Goblos and did not sign any sales tax returns he could not be held liable as a person required to collect sales tax.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides, in part, that every person required to collect the taxes imposed under Article 28 Tax Law is also personally liable for the tax imposed, collected, or required to be collected under such law. Section 1131(1) of the Tax Law defines "(p)ersons required to collect tax" as used in section 1133(a) to include any officer or employee of a corporation, or a dissolved corporation, who as such officer or employee is under a duty to act for the corporation in complying with any requirement of Article 28 of the Tax Law.

B. That some of the "[i]ndicia of this duty would include factors...such as the officer's day-to-day responsibilities and involvement with the financial affairs and management of the corporation, his knowledge of such matters, the officer's duties and functions... and the preparation and filing of sales tax forms and returns" (Vogel v. New York State Department of Taxation and Finance, 98 Misc. 2d 222, 225).

C. That inasmuch as petitioner was an officer and employee of Goblos, supervised the daily operations of the business, was a required signatory on all Goblos' checks, collected sales tax and turned it over to the president, and knew or should have known, as a necessary signatory, that checks for said tax were not being remitted to the Department of Taxation and Finance, he was a person required to collect tax within the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law.

D. That the petition of Otto Bloch is granted to the extent indicated in Finding of Fact "3"; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued November 29, 1977, May 5, 1978, May 9, 1978, December 20, 1978, and October 1, 1979; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983

Rodriguez
PRESIDENT

Frank Q. Koenig
COMMISSIONER

Mark J. [unclear]
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Otto Bloch :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 9/1/75 - 8/31/76. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Otto Bloch, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Otto Bloch
86-97 Marengo Ave.
Holliswood, NY 11423

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
15th day of July, 1983.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Otto Bloch :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 9/1/75 - 8/31/76. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon M. Joseph Levin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

M. Joseph Levin
Gering, Gross and Gross, Esqs.
86-26 Queens Blvd.
Elmhurst, NY 11373

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
15th day of July, 1983.

Connie A. Hagelund

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 481 208 048

RECEIPT FOR CERTIFIED MAIL

INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to M Joseph Levine	
Street and No. Get: 151 Gross +	
Gross 96-26 Queens Blvd	
P.O., State and ZIP Code ELmhurst NY 11373	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 208 047

RECEIPT FOR CERTIFIED MAIL

INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Otto Bloch	
Street and No. 86-97 Mahengo Ave	
P.O., State and ZIP Code Holliswood N.Y. 11423	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982