

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

February 4, 1983

William Feldman
10 Jamar Dr.
Fayetteville, NY 13066

Dear Mr. Feldman:

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 Laws 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
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Milton J. Crystal
Crystal, Manes & Rifken, P.C.
507 East Fayette St.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Feldman :
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 3/1/80 - 5/31/80. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon William Feldman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Feldman
10 Jamar Dr.
Fayetteville, NY 13066

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
4th day of February, 1983.

David Parchuck

James A. Huglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Feldman :
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 3/1/80 - 5/31/80. :

State of New York
County of Albany

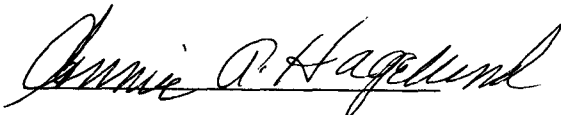
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of February, 1983, he served the within notice of Decision by certified mail upon Milton J. Crystal the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton J. Crystal
Crystal, Manes & Rifken, P.C.
507 East Fayette St.
Syracuse, NY 13202

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
4th day of February, 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

WILLIAM FELDMAN

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 March 1, 1980
through May 31, 1980.

Petitioner, William Feldman, 10 Jamar Drive, Fayetteville, New York 13066, 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 March 1, 1980 through May 31, 1980 (File No. 33064).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 333 E. Washington Street, Syracuse, New York, on January 13, 1982 at 1:15 P.M. Petitioner appeared by Milton J. Crystal, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether there is personal liability on the part of a corporate officer for the payment of sales tax when the corporation's check issued in payment of the tax was dishonored by the bank.

FINDINGS OF FACT

1. On March 2, 1981, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due to William Feldman in the amount of \$4,995.38 plus penalty of \$649.39 and interest of \$449.58 for a total amount due of

\$6,094.35. On March 20, 1981, a petition was filed by William Feldman requesting that the Notice and Demand for Payment be withdrawn.

2. On June 20, 1980, Phil Feldman & Sons, Inc. (the Corporation) filed a sales tax return with a check in payment of \$4,995.38. The return, signed by petitioner, as treasurer, was sent to the Syracuse District Tax Office as requested by a State tax auditor. On July 11, 1980 the check was dishonored by the Merchants National Bank & Trust Company of Syracuse, New York upon presentment. The check was returned not paid, the reason noted on the check as "hold on account".

3. The corporation had been sued on a negligence action and pursuant to a judgment the Onondaga County Sheriff levied on the bank account on July 10, 1980. Petitioner claimed that a phone call was made to the Syracuse Sales Tax Bureau advising it that it had ten days to act on the levy. A letter dated July 16, 1980 was mailed by Milton J. Crystal, Esq., to the State Sales Tax Bureau stating the Corporation's position on this subject and suggesting that "you take whatever steps may be necessary to forestall the payment over of these funds and to obtain payment of the check". The money (\$4,995.38) in the Corporation's special tax account was paid to the judgment creditor pursuant to the levy on July 20, 1980. Payment for the sales tax could not be fulfilled. As a result of said judgement, the Corporation went out of business.

4. The usual method of submission of sales tax returns in the Syracuse area is to send them in an envelope provided by the Audit Division to the Processing Unit, at a Post Office Box in the City of Syracuse, New York. Petitioner submitted a deposit slip with the Merchants Bank wherein \$4,995.00 was put into the corporation's tax payment account on June 20, 1980.

5. The Audit Division claimed that there was personal liability of petitioner as officer of said corporation.

CONCLUSIONS OF LAW

A. That section 171-a of the Tax Law requires that "(a)ll taxes, interest, penalties and fees collected or received by the tax commission under articles....twenty-eight...of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller."

B. That the Corporation did in fact remit a check for sales taxes due New York for the period in issue. The present case arose only because the corporate check was not deposited with the promptness mandated by statute. Moreover, the State had sufficient notice to take action to prevent the release of funds to the judgment creditor. Although petitioner was a "person required to collect tax" within the meaning of sections 1131(1) and 1133(a) of the Tax Law because he was under a duty to act for the corporation in remitting the tax to the State, he ceased being such person after he fulfilled his duty. See Matter of Robert A. Himoff, State Tax Commission January 9, 1981.

C. That the petition of William Feldman is granted and the notice issued March 2, 1980 is cancelled.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

P 389 758 510
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>William Feldman</i>	
Street and No. <i>10 Garmae Dr.</i>	
P.O., State and ZIP Code <i>Fayetteville N.Y. 13066</i>	
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 389 758 511
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>M. L. Crystal</i>	
Street and No. <i>Crystal, Maneset R. F. H.</i>	
P.O., State and ZIP Code <i>507 East Fayette St</i>	
P.O., State and ZIP Code <i>Syracuse N.Y. 13202</i>	
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