

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

July 15, 1983

Hanellin School Photography, Inc.  
and Richard & Dolores Hanellin  
19 Bramble Lane  
Melville, NY 11746

Gentlemen:

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  
Irving Jankowitz  
Lipner, Jankowitz, Gordon & Co.  
45 Cutter Mill Rd.  
Great Neck, NY 11021  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Hanellin School Photography, Inc. :  
and Richard & Dolores Hanellin : 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 3/1/77-6/15/79. :

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 Hanellin School Photography, Inc., and Richard & Dolores Hanellin the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hanellin School Photography, Inc.  
and Richard & Dolores Hanellin  
19 Bramble Lane  
Melville, NY 11746

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 :  
Hanellin School Photography, Inc. :  
and Richard & Dolores Hanellin :

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 3/1/77-6/15/79. :

State of New York  
County of Albany

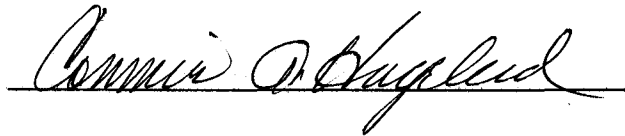
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Irving Jankowitz the representative of the petitioner in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

Irving Jankowitz  
Lipner, Jankowitz, Gordon & Co.  
45 Cutter Mill Rd.  
Great Neck, NY 11021

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.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HANELLIN SCHOOL PHOTOGRAPHY, INC. and	:	DECISION
RICHARD HANELLIN AND DOLORES HANELLIN	:	
	:	
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, 1977	:	
through June 15, 1979.	:	

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Petitioners, Hanellin School Photography, Inc. and Richard Hanellin and Dolores Hanellin, 19 Bramble Lane, Melville, New York 11746, 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, 1977 through June 15, 1979 (File Nos. 30914, 31085, 31086).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 9, 1982 at 10:45 A.M., with additional evidence to be submitted by January 15, 1983. Petitioners appeared by Irving Jankowitz, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUES

I. Whether petitioner Hanellin School Photography, Inc. was required to collect sales tax on certain sales of student pictures.

II. Whether petitioners Richard Hanellin and Dolores Hanellin are personally liable for sales taxes due from Hanellin School Photography, Inc.

FINDINGS OF FACT

1. Petitioner Hanellin School Photography, Inc. ("Hanellin") was a photographer engaged in the sale of student pictures. Hanellin filed a petition

for bankruptcy on June 15, 1979 and was issued a Discharge of Bankruptcy on January 13, 1981.

2. On April 11, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Hanellin covering the period March 1, 1977 through June 15, 1979 for taxes due of \$23,186.25, plus interest of \$2,432.51, for a total of \$25,618.76. Similar notices were issued on April 30, 1980 against petitioners Richard Hanellin and Dolores Hanellin, individually and as officers of Hanellin. However, penalties were asserted against the individuals in addition to the interest.

The Notice issued to Hanellin resulted from its failure to produce books and records for audit as required by section 1142 of the Tax Law.

3. At a pre-hearing conference, Hanellin submitted bank deposit slips and exemption certificates which were the only records it could locate. The Audit Division examined the deposit slips and determined total deposits of \$498,022.00 for the audit period. This amount included adjustments for returned checks and loans. The deposit slips had the name of a school written on it. The auditor traced the names on the deposit slips to exemption certificates for three sales tax filing periods and found certificates for approximately 14 percent. However, the records were inadequate to determine if the exempt organization was the purchaser of the photographs and the payer of record. The Audit Division computed taxes due of \$35,429.40 on the above bank deposits. Petitioner paid sales taxes of \$12,075.25 for the same period, leaving additional taxes due of \$23,354.15. No adjustment was made to the notices issued April 11, 1980 and April 30, 1980 since the taxes determined due on audit were substantially the same as were originally estimated.

Petitioner did not file sales tax returns for the periods ending August 31, 1977, February 28, 1979, May 31, 1979 and August 31, 1979.

4. Hanellin solicited sales directly with the school or through a Parent Teacher Association (PTA). It was customary for petitioner to collect sales tax when it dealt directly with a school or in the unusual instance when it sold directly to students (senior portraits). When the sales were negotiated with the PTA, the PTA made all arrangements for the photographing. Hanellin photographed the entire student body. The film was sent to a processor who sent the completed photographs directly to the PTA. The PTA was responsible for collecting the money for the photographs or returning the unsold photographs to Hanellin. The PTA either turned over all receipts individually to Hanellin or it deposited the monies in an account and issued one check to Hanellin in payment for the photographs. The PTA was paid a 20 percent commission on gross sales.

5. Hanellin failed to establish that an exempt organization was the actual purchaser of all the pictures and the payer of record for any of the transactions at issue.

6. The Audit Division conceded that the bank deposits held subject to tax should be reduced to \$437,907.00 to reflect \$60,115.00 of loans substantiated by Hanellin.

7. Hanellin did not make any sales after May 31, 1979.

8. Petitioners Richard Hanellin and Dolores Hanellin filed petitions individually, however, at the hearing they did not contest their personal responsibility for any taxes determined due from Hanellin.

9. Reasonable cause existed for petitioners' failure to collect tax on sales involving a PTA.

CONCLUSIONS OF LAW

A. That under the agreement between Hanellin and the PTA described in Finding of Fact "4", title to the pictures did not pass between the two and the PTA was only obligated to pay over receipts for the pictures sold to students or parents of students; that such an agreement does not constitute a sale within the meaning and intent of section 1101(b)(5) of the Tax Law.

That the pictures were placed on consignment with the PTA who acted as an agent of Hanellin for the purpose of making sales of student pictures to students or parents of students and under such circumstances, the PTA was required to collect sales tax on the total price of the pictures and remit it to Hanellin.

B. That Hanellin's sale of pictures to students or parents of students through its agents, PTA's, constituted retail sales subject to the tax imposed under section 1105(a) of the Tax Law. That since the PTA was neither the purchaser nor payer of record, an exemption certificate furnished by such an organization did not relieve Hanellin from its liability to collect tax in accordance with section 1132(c) of the Tax Law.

C. That in accordance with Finding of Fact "6", additional taxable sales shall be reduced by \$60,115.00.

D. That taxes of \$580.00 assessed for the period June 1, 1979 through June 15, 1979 are cancelled.

E. That petitioners, Richard Hanellin and Dolores Hanellin, were persons required to collect tax within the meaning and intent of section 1131(1) of the Tax Law and, therefore, have personal liability for the taxes due from Hanellin School Photography, Inc. in accordance with section 1133(a) of the Tax Law.

F. That the penalty asserted against petitioners, Richard Hanellin and Dolores Hanellin, is cancelled, except for penalties applicable to the non-filing of sales tax returns indicated in Finding of Fact "3".

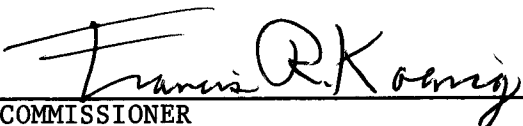
G. That the petitions of Hanellin School Photography, Inc. and Richard Hanellin and Dolores Hanellin are granted to the extent indicated in Conclusions of Law "C", "D" and "F". That the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued April 11, 1980 and April 30, 1980; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

**JUL 15 1983**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



P 481 208 024

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Hanellin School Photography, Inc.</b> <b>And Richard F. Dolore's Hanellin</b>	
Street and No. <b>19 Bramble Lane</b>	
P.O., State and ZIP Code <b>Melville, NY 11746</b>	
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 481 208 025

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Irving Tankowitz</b> <b>Lipner, Tankowitz, Gordon</b>	
Street and No. <b>45 Cutter Mill Rd.</b>	
P.O., State and ZIP Code <b>Great Neck, NY 11021</b>	
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	\$
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PS Form 3800, Feb. 1982