

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

June 29, 1983

Maplewood School  
2166 Wantagh Ave.  
Wantagh, NY 11793

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  
Ernest R. Field  
Field, Tiger, Krell & Werber  
175 Great Neck Rd.  
Great Neck, NY 11021  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Maplewood School

:

:

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:  
6/1/73 - 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 29th day of June, 1983, she served the within notice of Decision by certified mail upon Maplewood School, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Maplewood School  
2166 Wantagh Ave.  
Wantagh, NY 11793

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  
29th day of June, 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

Maplewood School

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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State of New York  
County of Albany

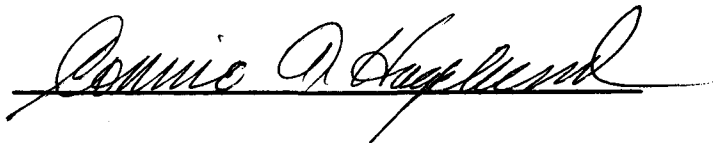
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of June, 1983, she served the within notice of Decision by certified mail upon Ernest R. Field the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ernest R. Field  
Field, Tiger, Krell & Werber  
175 Great Neck 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  
29th day of June, 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	:	
MAPLEWOOD SCHOOL	:	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 June 1, 1973	:	
through August 31, 1976.	:	

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Petitioner, Maplewood School, 2166 Wantaugh Avenue, Wantaugh, New York 11793, 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 June 1, 1973 through August 31, 1976 (File No. 22206).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 2, 1981 at 1:15 P.M. Petitioner appeared by Ernest R. Field, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's claim for refund of sales tax paid.

FINDINGS OF FACT

1. On August 18, 1976, Maplewood School filed an Application for Credit or Refund of State and Local Sales or Use Tax covering the period June 1, 1973 through August 31, 1976. A refund of \$6,149.60, plus interest of \$694.64, for a total of \$6,844.24 was requested on the grounds that sales tax was erroneously

paid since Maplewood School is an organization exempt from sales tax under section 1116(a)(4) of the Tax Law.

2. On May 9, 1978, the Audit Division approved petitioner's claim for refund to the extent of \$594.96 (including interest) and denied the balance of \$6,249.28 on the following grounds:

(a) Invoices were billed to Sidney Jaffe instead of the school.

(b) Invoices billed from Crown Central Petroleum Corporation and Mobil Oil Corporation did not show sales tax paid and some invoices were not made out in the name of the school.

(c) A portion of the claim was beyond the statute of limitations.

3. It was the Audit Division's position that only those purchases billed directly to Maplewood School and paid for by Maplewood School qualify for refund of sales tax.

4. Petitioner was authorized to operate an educational institution by the New York State Education Department since March 19, 1957. Petitioner received exempt organization status on June 17, 1976 from the New York State Sales Tax Bureau. The Audit Division did not raise the issue of Maplewood School's status as an exempt organization prior to that date. The Audit Division approved a portion of petitioner's refund claim for sales taxes paid prior to June 17, 1976.

5. Petitioner's major purchases such as utilities, heating fuels, telephone service and maintenance supplies and services were billed to Sidney Jaffe, who was the headmaster of Maplewood School during the period in issue. The phone listings were for those of Maplewood School and its headmaster, Sidney Jaffe. Fuel bills were for the premises occupied by Maplewood School. All purchases in issue were paid through the account of Maplewood School.

6. Petitioner purchased gasoline from Crown Central Petroleum Corporation and Mobil Oil Corporation. The gasoline was sold through metered pumps which included all Federal and New York State taxes in the selling price per gallon.

7. Petitioner's claim for refund included invoices billed prior to June 1, 1973 which were paid after that date.

#### CONCLUSIONS OF LAW

A. That section 1116(a)(4) exempts from tax any sale to or any use by any corporation,...association...or foundation organized and operated exclusively for...educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual... That petitioner is such an organization as evidenced by the status received on June 17, 1976. That an issue of the status of Maplewood School prior to June 17, 1976 did not arise, therefore, any purchases made in the name of Sidney Jaffe as headmaster of Maplewood School and paid for from the funds of Maplewood School were sales to and for use by the school, an organization exempt from tax under section 1116(a)(4) of the Tax Law. That the refund of sales tax applicable to such purchases is hereby granted.

B. That petitioner's purchases of gasoline included New York State and local sales taxes as found in Finding of Fact "6". That such purchases also included Federal and state gasoline taxes; therefore, petitioner's claim for refund is adjusted to reflect the sales tax paid on the selling price excluding the state gasoline tax. That except as modified, the refund applicable to such purchases is granted.

C. That section 1139(a) of the Tax Law provides for refund of any tax erroneously paid if application is filed with the tax commission; (i) in the case of tax paid by the applicant to a person required to collect tax, within

three years after the date when the tax was payable by such person to the tax commission. That the refund of sales tax paid is therefore limited to those purchases billed on and after June 1, 1973.

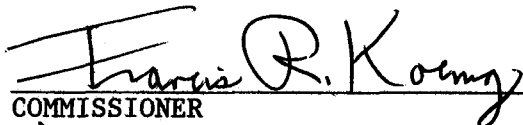
D. That the petition of Maplewood School is granted to the extent indicated in Conclusions of Law "A" and "B" above; that the Audit Division is directed to accordingly modify the denial of refund dated May 9, 1978; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 29 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 481 207 659

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Maplewood School</b>	
Street and No. <b>2166 Wantagh Ave.</b>	
P.O., State and ZIP Code <b>Wantagh, NY 11793</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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 207 660

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <b>Ernest R. Field</b>	
Street and No. <b>Field, Tiger, Krell &amp; Werber</b>	
P.O., State and ZIP Code <b>175 Great Neck Rd.</b>	
<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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982