

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

September 16, 1983

Ronald Rossi
26 3rd Ave.
E. Islip, NY

Dear Mr. Rossi:

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
Ronald Hoffman
Blottner, Derrico, Weiss & Hoffman
300 Sunrise Hwy.
W. Babylon, NY 11704
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Ronald Rossi

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 12/1/73 - 2/28/75. :

State of New York
County of Albany

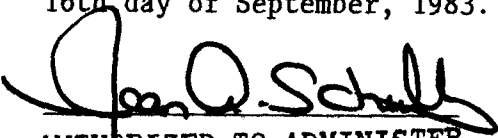
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Ronald Rossi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ronald Rossi
26 3rd Ave.
E. Islip, NY

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
16th day of September, 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 :
Ronald Rossi :
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 12/1/73 - 2/28/75. :

State of New York
County of Albany

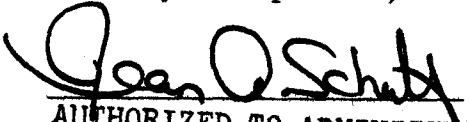
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 16th day of September, 1983, she served the within notice of Decision by certified mail upon Ronald Hoffman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ronald Hoffman
Blottner, Derrico, Weiss & Hoffman
300 Sunrise Hwy.
W. Babylon, NY 11704

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
16th day of September, 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 | : | |
| RONALD ROSSI | : | 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 December 1, 1973 | : | |
| through February 28, 1975. | : | |

Petitioner, Ronald Rossi, 26 Third Avenue, East Islip, New York 11730, 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 December 1, 1973 through February 28, 1975 (File No. 24459).

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 September 25, 1981 at 9:15 A.M. Petitioner appeared by G. Ronald Hoffman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether the execution by an officer of a corporation of a "Consent Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law" extends the period of limitation for assessment of a former officer.

II. Whether the Audit Division properly determined, pursuant to audit, the amount of sales tax liability of the corporation for the period in issue.

III. Whether petitioner was liable as a person required to collect tax under sections 1131(1) and 1133(a) of the Tax Law for sales tax owed by Starfish Marine Boat and Motor Sales, Inc.

FINDINGS OF FACT

1. On February 15, 1977 and February 21, 1978, Victor G. Kane, the president of Starfish Marine Boat and Motor Sales, Inc. ("Starfish"), executed consents on behalf of said corporation extending the periods of limitation for the assessment of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1973 through August 31, 1976 to any time on or before March 20, 1978 and September 20, 1978, respectively.

2. On September 8, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period December 1, 1973 through February 28, 1975 against Ronald Rossi on the basis that he is personally liable as an officer of Starfish under sections 1131(1) and 1133 of the Tax Law for taxes determined to be due in accordance with section 1138(a) of the Tax Law in the amount of \$22,620.04, plus penalty of \$5,654.99 and interest of \$11,104.45, for a total due of \$39,379.48. On November 14, 1978, petitioner was advised that the amount of tax due was revised to \$21,934.04, plus penalty and interest to December 4, 1978 of \$16,867.12, for a total due of \$38,801.16.

3. On December 29, 1980, petitioner filed a perfected petition wherein he alleges that the taxes, penalties and interest were improperly assessed because:

a. The test period which was utilized by the Sales Tax Bureau was inconclusive;

b. A substantive portion of the sales during the period in question were "exempt sales", therefore, tax due thereon was incorrectly calculated;

c. Petitioner was an officer of Starfish Marine Boat & Motor Sales, Inc. until March, 1975, at which time, he sold all of his interest in and to said corporation, therefore, that portion of the period in question

after March, 1975 is a period of time for which petitioner is not personally liable for any taxes determined to be due.

d. Petitioner's status as an officer, director, and/or shareholder in Starfish Marine Boat & Motor Sales, Inc. ceased as of March, 1975, and

1) Notice of Determination and Demand for Payment of Sales and Use Taxes Due (S780908001F) is dated September 8, 1978;

2) More than three years had expired from the date of the filing of tax returns for all of the tax periods in question until the date the above notice was served;

3) The "taxpayer", in this instance the corporation, Starfish Marine Boat & Motor Sales, Inc., extended the time period applicable to an additional assessment by the State Tax Commission for sales taxes pursuant to Section 1147 of the New York State Tax Law without the consent in writing of the petitioner herein;

4) Pursuant to Section 1147 of the New York State Tax Law and Section 17-103 of the General Obligations Law, the statute of limitations applicable to the instant case had expired as against the petitioner, and he is not personally liable for any additional assessment of taxes.

4. The Audit Division in its answer acknowledges that petitioner was secretary-treasurer of Starfish from December 1, 1972 to February 28, 1975. Sales tax returns for this period were filed timely and payments were made thereto.

CONCLUSIONS OF LAW

A. That section 1147(b) of the Tax Law limits the time within which the State or the Tax Commission may "levy, appraise, assess, determine or enforce collection of" sales and use taxes. This section provides in pertinent part:

"However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return..."

B. Subdivision (c) of §1147 of the Tax Law provides as follows:

"(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by consents in writing made before the expiration of the extended period..."

C. That no assessment may be made with respect to Ronald Rossi for the periods in issue for which sales tax returns were filed more than three years prior to the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated September 8, 1978, since the consents to extend the period of limitation for assessment were executed by "taxpayer" Starfish Marine Boat and Motor Sales, Inc. and no consents were signed by "taxpayer" petitioner. The consents executed by Starfish Marine Boat and Motor Sales, Inc. cannot bind a former officer who was not in any way affiliated with the corporation at the time the waiver of the statute of limitations was executed.

D. That the issue with respect to whether the assessment itself was properly determined by the Audit Division and the issue of whether petitioner is a person liable to collect the tax are therefore moot.

E. That the petition of Ronald Rossi is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 8, 1978 is cancelled.

DATED: Albany, New York
SEP 16 1983

STATE TAX COMMISSION

Richard W. Allen
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER

P 481 208 380

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | |
|---|----|
| Sent to | |
| Ronald Rossi | |
| Street and No. | |
| 26 3rd Ave | |
| P.O., State and ZIP Code | |
| G Islip N.Y. | |
| 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 481 208 381

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | |
|---|----|
| Sent to | |
| Ronald Hoffman | |
| Street and No. | |
| Blottner, Jerrico | |
| Weiss + Hoffman | |
| P.O., State and ZIP Code | |
| 300 Sunrise Hwy | |
| to Babylon N.Y. 11704 | |
| 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

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

September 16, 1983

Ronald Rossi
26 3rd Ave.
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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ronald Hoffman
Blottner, Derrico, Weiss & Hoffman
300 Sunrise Hwy.
W. Babylon, NY 11704
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

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RONALD ROSSI

DECISION

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B. Subdivision (c) of §1147 of the Tax Law provides as follows:

"(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by consents in writing made before the expiration of the extended period...".

C. That no assessment may be made with respect to Ronald Rossi for the periods in issue for which sales tax returns were filed more than three years prior to the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated September 8, 1978, since the consents to extend the period of limitation for assessment were executed by "taxpayer" Starfish Marine Boat and Motor Sales, Inc. and no consents were signed by "taxpayer" petitioner. The consents executed by Starfish Marine Boat and Motor Sales, Inc. cannot bind a former officer who was not in any way affiliated with the corporation at the time the waiver of the statute of limitations was executed.

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E. That the petition of Ronald Rossi is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 8, 1978 is cancelled.

DATED: Albany, New York
SEP 16 1983

STATE TAX COMMISSION

Rodrick W. Cline
PRESIDENT

Francis R. Koenig
COMMISSIONER

Michael J. Jurek
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

☐ Mailed, not registered
☒ Addressee unknown
☐ ~~Postage Due~~

CERTIFIED

P 481 208 381

MAIL

F.T.E.

Expired

RE

Ronald Hoffman
Blottner, Derrico, Weiss & Hoffman
300 Sunrise Hwy.
W. Babylon, NY 11704

FC

RETURNED TO SENDER

- ☐ Postage Due
- ☐ Moved, left no address
- ☒ No such number
- ☐ Moved, not forwardable
- ☐ Addressee unknown
- ☒ Forwarding time expired