

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

July 22, 1983

Sili Schools Ltd.
c/o Steven D. Lassar
225 W. 34th St.
New York, NY 10122

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
Stephen D. Lassar
Goldfinger & Lassar
225 W. 34th St.
New York, NY 10122
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Sili Schools Ltd.

:

:

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:
Ended 9/1/74 - 8/31/79.

State of New York
County of Albany

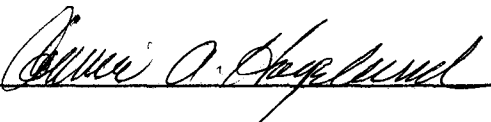
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Sili Schools Ltd., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

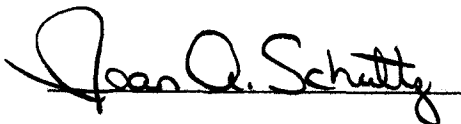
Sili Schools Ltd.
c/o Steven D. Lassar
225 W. 34th St.
New York, NY 10122

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
22nd 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

Sili Schools Ltd.

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 Ended 9/1/74 - 8/31/79.

State of New York
County of Albany

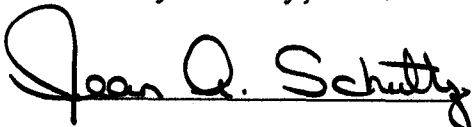
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Stephen D. Lassar the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen D. Lassar
Goldfinger & Lassar
225 W. 34th St.
New York, NY 10122

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
22nd 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	:	
SILI SCHOOLS, LTD.	:	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, 1974	:	
through August 31, 1979.	:	

Petitioner, Sili Schools, Ltd., c/o Stephen D. Lassar, 225 West 34th Street, New York, New York 10122, 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, 1974 through August 31, 1979 (File No. 29872).

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 8, 1982 at 9:15 A.M., with all briefs to be submitted by January 31, 1983. Petitioner appeared by Stephen D. Lassar, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUES

I. Whether petitioner, the purchaser in a bulk sales transaction, is liable for taxes determined due from the seller in accordance with section 1141(c) of the Tax Law.

II. Whether taxes determined due from Verbatim, Inc. for the period September 1, 1974 through August 31, 1976 were actually due from Key Board Shop, Inc.

III. Whether the Department of Taxation and Finance is required to apply a tax payment towards a specific deficiency designated by a taxpayer.

FINDINGS OF FACT

1. On June 26, 1979, petitioner, Sili Schools, Ltd., entered into an agreement to purchase the business assets of Verbatim, Inc. ("Verbatim") for \$23,000.00. The actual transfer of the assets took place on the same date, at which time \$3,938.91 was placed in escrow. Petitioner paid a bulk sales tax of \$700.00 on the purchase of the tangible assets.

Also, by letter dated June 26, 1979, petitioner's attorney advised the Department of Taxation and Finance that it purchased the assets of Verbatim. Said letter indicated the name of the seller's attorney and the anticipated date of transfer.

2. On July 31, 1979, the Audit Division notified petitioner of a possible claim for New York State and local sales and use taxes from Verbatim.

3. On March 31, 1980, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioner covering the periods September 1, 1974 through August 31, 1976 and September 1, 1976 through August 31, 1979 for taxes due of \$4,335.34 and \$3,166.62, respectively, plus applicable penalty and interest due thereon. The latter notice included bulk sales tax of \$700.00.

Said notices indicated that the taxes were determined due from Verbatim, and represented petitioner's liability, as purchaser, in accordance with section 1141(c) of the Tax Law.

4. Dominick Tursi was the President and sole stockholder of Verbatim and President and majority stockholder of Key Board Shop, Inc. ("Key Board"). Verbatim was a stenographic school, while Key Board sold and repaired stenotype equipment.

The Audit Division conducted an audit of the books and records of both corporations and as a result, on May 20, 1979, assessed additional taxes of \$4,335.34 against Key Board for the period September 1, 1974 through August 31, 1976 and \$3,166.62 against Verbatim for the period September 1, 1976 through August 31, 1979.

Dominick Tursi, by letter dated November 25, 1979, on behalf of both corporations agreed with the Audit Division's determinations.

5. On August 9, 1982, (sic) Mr. Tursi issued a check payable to the New York State Department of Taxation for \$7,081.46. Based on meetings with representatives of the Tax Compliance Bureau, it was Mr. Tursi's understanding that said payment was to be applied against the tax only on the following notices:

S790516033	\$4,335.34
S790516035	2,466.62 (\$3,166.62 - \$700.00)
D7901230257	195.99
D7904066001	83.51
	<u>\$7,081.46</u>

Mr. Tursi's intent was to stop any further penalties and interest from accruing.

The Audit Division, instead, used the entire payment to satisfy Notice #S790516033 (the assessment against Key Board) including tax, penalty and interest. Because of this payment, the Audit Division is no longer seeking such taxes from petitioner. The Audit Division also conceded that the bulk sales tax of \$700.00 was paid and should be deleted from the notice issued for the period September 1, 1976 through August 31, 1979.

6. Petitioner made the following arguments:

1) The Audit Division failed to give notification of the amount of its claim against Verbatim within the time limitations specified in section 1141(c) of the Tax Law.

2) The taxes assessed for the period September 1, 1974 through August 31, 1976 were due from Key Board, a corporation separate and distinct from Verbatim and since it did not purchase the assets of Key Board, there is no inherent liability.

3) The Audit Division was required to apply Mr. Tursi's payment as he directed (Finding of Fact "5") thereby relieving it from any liability since the taxes were paid.

CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law provides, in pertinent part, that:

"...(w)ithin ninety days of receipt of the notice of the sale...from the purchaser..., the tax commission shall give notice to the purchaser ...of the total amount of any tax or taxes which the state claims to be due from the seller...and whenever the tax commission shall fail to give such notice to the purchaser...within ninety days from receipt of the notice of the sale...such failure will release the purchaser... from any further obligation to withhold any sums of money...which the purchaser is required to transfer to the seller..."

B. That the Audit Division received notice of the sale on June 26, 1979 and did not notify petitioner of the taxes due from Verbatim until March 31, 1980, more than ninety days after receipt of the notice of the sale. Accordingly, petitioner is relieved from such liability within the meaning and intent of section 1141(c) of the Tax Law. (Matter of John S. Wade, State Tax Commission, March 6, 1981; Matter of Robert H. Millard, Gerald Stahurski and William F. Melanso, State Tax Commission, January 30, 1981.)

C. That Issues II and III are moot.

D. That the petition of Sili Schools, Ltd. is granted and the notices of determination and demand for payment of sales and use taxes due issued March 31, 1980 are cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 22 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 208 114

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Sili Schools Ltd.</u>	
Street and No. <u>c/o Steven D. Lassar</u>	
<u>225 W. 34th St.</u>	
P.O., State and ZIP Code <u>New York, NY 10122</u>	
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 481 208 115

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Stephen D. Lassar</u>	
Street and No. <u>Goldfinger & Lassar</u>	
<u>225 W. 34th St.</u>	
P.O., State and ZIP Code <u>New York, NY 10122</u>	
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