

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

February 11, 1983

Henry Stempien  
315 Richmond Ave.  
Syracuse, NY 13204

Dear Mr. Stempien:

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  
Michael C. Cogswell  
106 E. Main St.  
Elbridge, NY 13060  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Henry Stempien :

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:  
12/1/74 - 9/10/77.

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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Henry Stempien, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry Stempien  
315 Richmond Ave.  
Syracuse, NY 13204

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  
11th day of February, 1983.

David Parchuck

James A. Haymond

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 :  
Henry Stempien : 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 12/1/74 - 9/10/77.

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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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Michael C. Cogswell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael C. Cogswell  
106 E. Main St.  
Elbridge, NY 13060

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  
11th day of February, 1983.

David Parchuck

James A. Haylund

**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	:	
HENRY STEMPIEN	:	DECISION
for Redetermination of the Timeliness of a	:	
Petition under Articles 28 and 29 of the Tax	:	
Law for the Period December 1, 1974 through	:	
September 10, 1977.	:	

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Petitioner, Henry Stempien, 315 Richmond Avenue, Syracuse, New York 13204, filed a petition for redetermination of the timeliness of a petition under Articles 28 and 29 of the Tax Law for the Period December 1, 1974 through September 10, 1977 (File No. 32565).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on March 25, 1982 at 9:15 A.M. Petitioner appeared by Michael C. Cogswell, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner timely applied for a hearing to review a determination of tax due.

FINDINGS OF FACT

1. On September 2, 1977, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk from petitioner, Henry Stempien regarding his purchase of the Thomas Restaurant from Thomas Heaney, Sr. Said notification indicated September 10, 1977 as the scheduled date of sale.

2. On September 6, 1977, the Audit Division notified petitioner of a possible claim for New York State and local sales and use taxes from the seller.

On February 14, 1978, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period December 1, 1974 through September 10, 1977 for taxes due of \$4,289.88, plus penalty and interest of \$1,691.34, for a total of \$5,981.22. Petitioner was held liable for the taxes determined due from the seller in accordance with the provisions of section 1141(c) of the Tax Law.

3. When petitioner received the aforesaid notice, he retained counsel, Michael Cogswell. Mr. Cogswell instructed his secretary, Denine Savage, to type form TA-10 "Petition". Petitioner signed the petition on February 22, 1978 and returned said form to Mr. Cogswell's office. Ms. Savage mailed the petition to the address shown on the form on February 24, 1978.

4. Petitioner had no further correspondence with the Audit Division until January 15, 1981 when the Tax Compliance Bureau issued a subpoena for his appearance at the Syracuse District Office regarding the above notice.

Petitioner, by letter dated January 23, 1981, advised the Audit Division that he had requested a hearing on February 22, 1978. The Audit Division responded that it had no record of a petition being filed and therefore petitioner was not entitled to a hearing.

#### CONCLUSION OF LAW


That petitioner filed a petition for revision of a determination. When it is shown that a letter has been properly mailed, there arises a presumption that it was delivered to its addressed destination (News Syndicate Co. v.

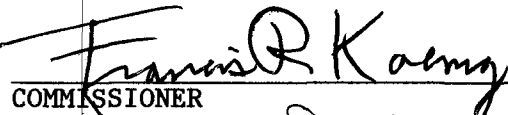
Gatti Paper Stock Corp., 256 N.Y. 211, 176 N.E. 169). Accordingly, petitioner shall be granted a hearing with respect to the Notice and Demand for Payment of Sales and Use Taxes Due issued February 14, 1978.


DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 389 758 594  
 RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Henry Stempien	
Street and No.	
315 Richmond Ave.	
P.O., State and ZIP Code	
Syracuse, NY 13204	
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 389 758 595  
 RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Michael C. Cogswell	
Street and No.	
106 E. Main St.	
P.O., State and ZIP Code	
Elbridge, NY 13060	
Postage	\$
Certified Fee	
Special Delivery Fee	
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Return Receipt Showing to whom and Date Delivered	
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PS Form 3800, Feb. 1982