

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

May 6, 1983

Super Seal Aluminum Industries, Inc.
55 4th St.
Brooklyn, NY 11231

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 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
Sidney Wolen
One World Trade Center, Suite 1411
New York, NY 10048
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Super Seal Aluminum Industries, Inc. :
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 3/1/74-2/28/77. :

AFFIDAVIT OF MAILING

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Super Seal Aluminum Industries, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Super Seal Aluminum Industries, Inc.
55 4th St.
Brooklyn, NY 11231

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
6th day of May, 1983.

David Parchuck

James R. DeGard

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Super Seal Aluminum Industries, Inc. :
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 3/1/74-2/28/77. :
_____ :

AFFIDAVIT OF MAILING

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Sidney Wolen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sidney Wolen
One World Trade Center, Suite 1411
New York, NY 10048

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
6th day of May, 1983.

David Parchuck

James P. Heglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SUPER SEAL ALUMINUM INDUSTRIES, INC.	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Tax under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1974	:	
through February 28, 1977.	:	

Petitioner, Super Seal Aluminum Industries, Inc., 55 4th Street, Brooklyn, New York, filed a petition for revision of a determination or for refund of sales and use tax under Articles 28 and 29 of the Tax Law for the period March 1, 1974 through February 28, 1977 (File No. 21630).

A formal hearing was held before Milton Koerner, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 8, 1980 at 9:15 A.M. and continued before Robert A. Couze, Hearing Officer on July 16, 1981 at 12:05 P.M. Petitioner appeared on October 8, 1980 by Sidney Wolen, Esq. and Kraut & Resnick, Esqs. (Alan G. Kraut, Esq., of counsel) and on July 16, 1981 by Sidney Wolen, Esq. The Audit Division appeared by Ralph Vecchio, Esq., (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed exemptions for certain allegedly nontaxable sales for which proper certificates were either unavailable or incomplete.

II. Whether the Audit Division used cash receipts figures which already included sales tax in determining petitioner's tax liability.

III. Whether penalty and interest in excess of the statutory minimum should be waived.

FINDINGS OF FACT

1. On January 9, 1978, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Super Seal Aluminum Industries, Inc., in the amount of \$26,038.27, plus penalty and interest of \$10,528.03, for a total of \$36,566.30 for the period March 1, 1974 through February 28, 1977. The Notice also included petitioner's officers, Joseph Vespa, Joseph Rotella and Morton Ben.

2. During the period in issue, petitioner sold and occasionally installed windows. Some of petitioner's sales were for resale. Other sales were made directly to customers where petitioner installed the windows. Petitioner also sold directly to contractors who performed the installation.

3. On audit, the Audit Division determined that during the period March 1, 1974 through May 31, 1975 petitioner was claiming as nontaxable, sales to contractors who were installing the windows rather than reselling them. In other cases, petitioner claimed exempt sales for which it either did not have the necessary certificates or the certificates it did have were incomplete. The auditor performed a test of the aforementioned period using sales from May, 1975. As a result of the test, the auditor disallowed 26.1 percent of nontaxable sales. This percentage was applied to nontaxable sales for the period March 1, 1974 through May 31, 1975.

4. For the period June 1, 1975 through February 28, 1977, petitioner reported no taxable sales and failed to report its gross sales. The auditor tested sales for December, 1976 and determined that 68.5 percent of gross sales were taxable. This percentage was applied to gross sales for the aforementioned

period. The auditor made allowances for certain window installations for which petitioner had properly completed capital improvement certificates.

5. Petitioner maintained that the Audit Division had erroneously computed sales tax due because the auditor had used cash receipts figures which already included sales tax. Thus, tax had been computed on tax. Following adjournment of the first hearing, the Audit Division allowed petitioner to prove by invoices whether sales tax had been included in the cash receipts figures. Petitioner was able to show that, on 23 percent of sales, tax had been collected. The auditor accepted these invoices and further allowed a total of 50 percent of sales as having tax previously collected. This allowance resulted in a reduction of the assessment by \$1,167.00.

6. Petitioner also maintained that the Audit Division had disallowed an excessive amount of nontaxable sales due to unavailable or incomplete resale certificates. At the first hearing, petitioner produced resale certificates which had not been previously brought to the auditor's attention. These certificates resulted in the assessment being reduced by \$2,991.00. At the second hearing, petitioner produced additional exemption certificates which resulted in the assessment being reduced by an additional \$1,756.22.

7. At the second hearing, taking into account the aforesaid reductions allowed by the Audit Division, the amount asserted to be due was \$20,124.05.¹ Of this amount, petitioner conceded that \$14,000.00 was due, leaving a balance

¹ The Audit Division made a mistake in transcribing the amount reduced based on resale certificates produced at the first hearing. The hearing transcript indicated a total reduction based on resale certificates of \$2,991.00. The auditor used a figure of \$2,891.00 in arriving at a revised assessment. Moreover, the auditor made a subtraction error in reducing the original assessment. The correct figures should be: original assessment, \$26,038.27 less reductions at first hearing, \$2,991.00, reduction upon further examination, \$1,167.00, and reduction at second hearing, \$1,756.22, for a revised assessment of \$20,124.05.

at issue of \$6,124.05. Petitioner maintained that the amount at issue was not due because the auditor used figures from the cash receipts book that included sales tax and that petitioner was entitled to a 100 percent allowance of this amount, not the 50 percent allowed by the auditor. Other than the invoices indicating that 23 percent of the sales in the cash receipts book included tax, petitioner could produce no other evidence which would indicate that 100 percent of the cash receipts had tax included.

8. Petitioner also maintained that part of the amount in issue was the result of tax exempt sales for which no documentation in the form of exemption certificates could be produced. Petitioner argued that it should be given a 100 percent allowance for these sales despite the absence of said certificates because, based on petitioner's accountant's experience, it was a common practice for small manufacturers to fail to obtain such certificates from customers.

9. Despite petitioner's inadequate bookkeeping procedures, it acted in good faith at all times and there was no willful attempt to evade the tax.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law provides, in part, that:

"it shall be presumed that all receipts for property or services... are subject to tax until the contrary is established and the burden of proving that any receipt...is not taxable hereunder shall be upon the person required to collect tax or the customer."

Inasmuch as petitioner was only able to prove that 23 percent of the sales recorded in its cash receipts book had tax included, the 50 percent figure allowed by the auditor was reasonable and adequate and petitioner failed to meet its burden of proof in establishing that it was entitled to a 100 percent allowance.

B. That section 1132(c) of the Tax Law provides that unless a vendor obtains a resale certificate "in such form as the tax commission may prescribe" from its customers, such sales will be deemed taxable sales at retail. Since petitioner was unable to produce additional resale certificates, it did not rebut the presumption that such sales were taxable and any such sales which were not shown to be exempt by proper certification were properly disallowed by the Audit Division. An incomplete resale certificate is not a proper certification "in such form as the tax commission may prescribe" within the meaning and intent of section 1132(c).

C. That pursuant to the reductions in the assessment discussed in Findings of Fact "5", "6", and "7", the assessment is hereby reduced to \$20,124.05.

D. That penalty and interest in excess of the minimum prescribed by section 1145(a) of the Tax Law are waived.

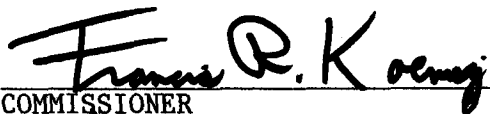
E. That the petition of Super Seal Aluminum Industries, Inc. is granted to the extent indicated in Conclusions of Law "C" and "D" above; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 9, 1978; and that, except as so granted, the petition is in all other respects denied.

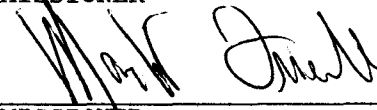
DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

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

May 6, 1983

Super Seal Aluminum Industries, Inc.
55 4th St.
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Sidney Wolen
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C. That pursuant to the reductions in the assessment discussed in Findings of Fact "5", "6", and "7", the assessment is hereby reduced to \$20,124.05.

D. That penalty and interest in excess of the minimum prescribed by section 1145(a) of the Tax Law are waived.

E. That the petition of Super Seal Aluminum Industries, Inc. is granted to the extent indicated in Conclusions of Law "C" and "D" above; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 9, 1978; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

Roderic A. Allen
PRESIDENT

Francis R. Kearney
COMMISSIONER

Mark J. [Signature]
COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requester Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit	Date of Request <i>5/20/83</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>F 5/6/83</i>
Name <i>Super Seal Aluminum Industries, Inc.</i>	
Address <i>55 4th St.</i> <i>Brooklyn, N. Y.</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>Reps Capay</i>

Searched by <i>DD</i>	Section	Date of Search <i>5/20/83</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

P 389 758 905
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Super Seal Aluminum Industries, Inc.	
Street and No. 55 4th St.	
P.O., State and ZIP Code Brooklyn, NY 11231	
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 389 758 906
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Sidney Wolen	
Street and No. One World Trade Center, Suite 1411	
P.O., State and ZIP Code New York, NY 10048	
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

TA 26 (9-79)

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

REMOVED
NOT FORWARDABLE
NEW YORK, NY.

MOVED
NOT-FILED
5-19-83

Sidney Wolen
One World Trade Center, Suite 1411
New York, NY 10048

CERTIFIED

P 389 758 906

MAIL