

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

June 24, 1983

Turners Grove, Inc. (purchaser)  
RD #1 Taft Road  
East Syracuse, NY 13057

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  
Shae C. Riley  
Grimaldi & Fagliarone  
627 W. Genesee St.  
Syracuse, NY 13204  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Turners Grove, Inc. (purchaser) : 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 :  
Periods 12/1/69 - 11/30/72 & 6/1/74 - 12/31/75.

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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 24th day of June, 1983, she served the within notice of Decision by certified mail upon Turners Grove, Inc. (purchaser), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Turners Grove, Inc. (purchaser)  
RD #1 Taft Road  
East Syracuse, NY 13057

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  
24th 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  
Turners Grove, Inc. (purchaser) :

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 :  
Periods 12/1/69 - 11/30/72 & 6/1/74 - 12/31/75.

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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 24th day of June, 1983, she served the within notice of Decision by certified mail upon Shae C. Riley the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Shae C. Riley  
Grimaldi & Fagliarone  
627 W. Genesee St.  
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 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  
24th 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	:	
	:	
TURNER'S GROVE, INC. (PURCHASER)	:	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 Periods December 1, 1969	:	
through November 30, 1972 and June 1, 1974	:	
through December 31, 1975.	:	

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Petitioner, Turner's Grove, Inc., Taft Road, RD 1, East Syracuse, New York 13057, 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 periods December 1, 1969 through November 30, 1972 and June 1, 1974 through December 31, 1975 (File No. 19754).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on April 30, 1981 at 1:15 P.M. Petitioner appeared by Grimaldi & Fagliarone, C.P.A.'s (Shae C. Riley, C.P.A.). The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether the Audit Division timely issued a notice to the petitioner of the total amount of taxes which the State claimed to be due from the seller in a bulk sale transaction.

II. Whether the Audit Division is required to take action against the bulk sale seller prior to seeking to obtain sales taxes due from the bulk sale purchaser.

FINDINGS OF FACT

1. On March 28, 1977, petitioner, Turner's Grove, Inc., filed a Notification of Sale, Transfer or Assignment in Bulk with the Audit Division. Information submitted was that Anthony Barnell and Louis Cacciola sold the land, buildings and equipment of Taft Grove, RD 1, Taft Road, East Syracuse, to Turner's Grove, Inc. for \$70,000.00 of which the furniture, fixtures, etc. were listed at \$45,000.00. The date of sale was September 9, 1975. The Department of Taxation and Finance received said notice on April 1, 1977.

2. On June 30, 1977, the Audit Division notified petitioner as purchaser in a bulk sale transaction of a possible claim for New York State and local sales and use taxes from the seller Anthony Barnell and Louis Cacciola d/b/a Taft Grove.

3. On July 15, 1977, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against Turner's Grove, Inc. (Purchaser) covering the periods December 1, 1969 to November 30, 1972 and June 1, 1974 to December 31, 1975 for taxes due of \$11,563.33, plus penalty and interest of \$5,870.20, for a total of \$17,433.53. Petitioner was held liable for taxes determined due from Anthony Barnell and Louis Cacciola d/b/a Taft Grove in accordance with section 1141(c) of the Tax Law. The Notice also included the bulk sale tax on the value of tangible personal property transferred.

4. Petitioner argued that it had not paid the tax because it was secondarily liable and that collection should not proceed against it until the State proceeded against the seller of the property. Petitioner further argued that it had not received timely notice of sales tax due from the seller.

CONCLUSIONS OF LAW

A. That the transaction between petitioner and Anthony Barnell and Louis Cacciola d/b/a Taft Grove constituted a bulk sale within the meaning and intent of section 1141(c) of the Tax Law.

B. That section 1141(c) of the Tax Law effective during the period in issue provided, in part, that within 180 days of receipt of the notice of a bulk sale, the Tax Commission must give notice to the purchaser of any taxes which the State claims to be due from the seller. The Department of Taxation and Finance received notice of the bulk sale in issue on April 1, 1977 and the Audit Division issued a notice and demand on July 15, 1977. Since the notice was issued within the 180 day statutory period such notice was timely.

C. That the State may not be estopped "from collecting taxes lawfully imposed and remaining unpaid in the absence of statutory authority" (McMahon v. State Tax Commission, 45 A.D.2d 625, 627). There is no statutory duty or responsibility imposed on the State to first obtain tax due from the seller in a bulk sale transaction (Matter of Edward M. Burns d/b/a Studio B, State Tax Commission, December 14, 1982).


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 Turner's Grove, Inc. is granted to the extent indicated in Conclusion of Law "D", and that, except as granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 24 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 481 207 948

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

Sent to <i>Turners Grove, Inc (purchaser)</i>	
Street and No. <i>RD #7 TA Ft Road</i>	
P.O., State and ZIP Code <i>East Syracuse, NY 13057</i>	
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	

P 481 207 949

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

Sent to <i>Shae C. Riley</i>	
Street and No. <i>Grimaldi + Faglarone</i>	
P.O., State and ZIP Code <i>627 W Genesee St. Syracuse, NY 13204</i>	
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	