

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

July 22, 1983

Twin Valley Publishers, Inc.
12 South Chenango Street
P.O. Box 248
Greene, NY 13778

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Twin Valley Publishers, Inc. : 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:
1/1/69 - 3/31/69.

State of New York
County of Albany

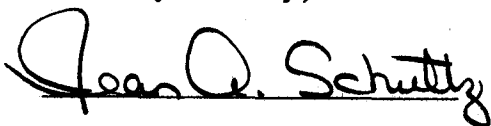
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of July, 1983, she served the within notice of Decision by certified mail upon Twin Valley Publishers, Inc., the petitioner in the within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

Twin Valley Publishers, Inc.
12 South Chenango Street
P.O. Box 248
Greene, NY 13778

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	:	
	:	
TWIN VALLEY PUBLISHERS, INC.	:	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 January 1,	:	
1969 through March 31, 1969.	:	

Petitioner, Twin Valley Publishers, Inc., 12 South Chenango Street, P.O. Box 248, Greene, New York 13778, 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 January 1, 1969 through March 31, 1969 (File No. 34476).

A small claims hearing was held before John F. Koagel, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, 2nd Floor, Room 206, Binghamton, New York, on February 11, 1983 at 9:00 A.M. with additional evidence to be submitted by March 25, 1983. Petitioner appeared by Amy L. Marsland, Treasurer. The Audit Division appeared by Paul B. Coburn, Esq. (James F. Morris, Esq., of counsel).

ISSUE

Whether a claim for refund of sales tax paid on alleged exempt production machinery should be considered even though it was not filed within the three year statutory period.

FINDINGS OF FACT

1. On May 17, 1977, petitioner, Twin Valley Publishers, Inc., filed an Application for Credit or Refund of State and Local Sales or Use Tax. The refund claim was in the amount of \$1,345.60 and covered the period January 1,

1969 through March 31, 1969. The refund claim was filed on behalf of petitioner by Amy L. Marsland, Secretary-Treasurer.

2. The refund sought to recover sales tax paid by petitioner as a result of a bulk sale transaction wherein equipment was purchased from James MacLachlan d/b/a Tri Town News for \$36,580.00.

3. Petitioner does not dispute that more than 3 years has passed from the time the tax was paid and the refund claim filed.

4. Petitioner maintains that the bulk sale reporting form [Notification of Sale, Transfer or Assignment in Bulk] is misleading as there is no line on said form to list nontaxable machinery and equipment and that the form leads taxpayers to believe that all machinery and equipment transferred as a result of a bulk sale are taxable. Petitioner asserted that because of the above, the statute of limitations as set forth in section 1139(a) of the Tax Law should not apply because, in fraud cases, the statute of limitations is three years from the point of discovery. Petitioner did not discover that the tax at issue was erroneously paid until 1977 when the same type of transaction occurred. At that time, sales and use tax was paid on the total purchase price of the furniture, fixtures, machinery, equipment and supplies. Subsequently, upon learning of the exempt status of some of the machinery and equipment, a refund claim was filed and the appropriate tax was refunded to petitioner. Based on this, petitioner maintains that the refund claim at issue should be approved because petitioner was misled into paying the tax and that it did file the refund claim within three years of discovery.

5. Petitioner asserted that three law firms in its area deemed the Notification of Sale, Transfer or Assignment in Bulk misleading. Petitioner stated that although requests were made, no action was taken by the Department

of Taxation and Finance to change the bulk sale form. Petitioner further asserted that when their bulk sale notification forms were reviewed, there should have been no question that a portion of the machinery and equipment purchased was exempt as the forms were filed with the names of the sellers which are readily recognizable as newspapers.

6. Petitioner filed the petition for two reasons: (1) to recover the tax erroneously paid, and (2) to see justice done by having the bulk sale notification form modified to provide a line to enter the exempt portion of machinery and equipment.

CONCLUSIONS OF LAW

A. That section 1139(a) of the Tax Law, in pertinent part, provides:

"In the manner provided in this section the tax commission shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor shall be filed with the tax commission... (ii) in the case of a tax, penalty or interest paid by the applicant to the tax commission, within three years after the date when such amount was payable under this article,..."

B. That petitioner failed to file a timely refund application within three years after payment of the tax as prescribed by section 1139(a) of the Tax Law. That, therefore, no refund is due petitioner.

C. That petitioner voluntarily paid the tax without protest under a mistake of law. "That taxes improperly collected cannot be recovered when paid voluntarily and without protest." [Bankers Trust Company v. The New York State Department of Taxation and Finance No.006061/79 [AD May 15, 1980]]. See also Mercury Machine Importing Corp. v. City of New York, 3 NY2d 418; 165 NYS2d 517.

D. That the petition of Twin Valley Publishers, Inc. is hereby denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 22 1983

Rodrick W. Clem
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Neelander
COMMISSIONER

P 481 208 118

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Twin Valley Publishers, Inc.</i>	
Street and No. <i>13 South Chenango Street</i> <i>P.O. Box 248</i>	
P.O., State and ZIP Code <i>Greene, NY 13778</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	

PS Form 3800, Feb. 1982