

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

February 11, 1983

Ultra Sonic Recording Studios, Inc.
and William J. Stahl, Officer
87 Mulberry Avenue
Garden City, NY 11530

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
Charles R. Fausel
P.O. Box 434, 2 Grant St.
Tuckahoe, NY 10707
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ultra Sonic Recording Studios, 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 6/1/75-12/20/78. :

In the Matter of the Petition :
of :
William J. Stahl, Officer :
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 6/1/75-12/20/78. :

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 Ultra Sonic Recording Studios, Inc. and William J. Stahl, Officer the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ultra Sonic Recording Studios, Inc.
and William J. Stahl, Officer
87 Mulberry Avenue
Garden City, NY 11530

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

Connie T. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ultra Sonic Recording Studios, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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In the Matter of the Petition :
of :
William J. Stahl, Officer :

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
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State of New York
County of Albany

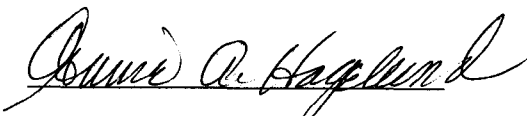
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of February, 1983, he served the within notice of Decision by certified mail upon Charles R. Fausel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles R. Fausel
P.O. Box 434, 2 Grant St.
Tuckahoe, NY 10707

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.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ULTRA SONIC RECORDING STUDIOS, INC.	:	
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 June 1, 1975	:	
through December 20, 1978.	:	

DECISION

In the Matter of the Petition	:	
of	:	
WILLIAM J. STAHL, OFFICER	:	
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 June 1, 1975	:	
through December 20, 1978.	:	

Petitioners Ultra Sonic Recording Studios, Inc. and William J. Stahl, Officer, 87 Mulberry Avenue, Garden City, New York 11530, 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 June 1, 1975 through December 20, 1978 (File Nos. 27915 and 27916).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1982 at 10:45 A.M. Petitioners appeared by Charles R. Fausel, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed certain sales made by petitioner corporation claimed to be exempt sales.

FINDINGS OF FACT

1. On July 20, 1979, the Audit Division issued two notices of determination and demand for payment of sales and use taxes due against Ultra Sonic Recording Studios, Inc. covering the period June 1, 1975 to December 20, 1978. The notices were issued as a result of a field audit and asserted total additional sales and use tax due of \$16,997.82 plus penalty and interest of \$8,838.21 for a total due of \$25,836.03.

2. On July 20, 1979, the Audit Division issued two notices of determination and demand for payment of sales and use taxes due against William J. Stahl as officer of Ultra Sonic Recording Studios, Inc. for the same aforesaid period. The notices asserted total additional sales tax due of \$15,594.23 plus penalty and interest of \$8,013.70 for a total due of \$23,607.93. The Audit Division did not assert use tax against William J. Stahl as officer.

3. Petitioner Ultra Sonic Recording Studios, Inc. ("Ultra Sonic"), by signature of its president, William J. Stahl, executed a consent to extend the period of limitation for the issuance of an assessment for the period June 1, 1975 through May 31, 1978 to September 20, 1979.

4. Ultra Sonic operated a recording studio at 100 North Franklin Street, Hempstead, New York, where it manufactured and sold tapes, cassettes and master records. Petitioner corporation ceased its operation on December 20, 1978.

5. On audit, the Audit Division reviewed sales made by Ultra Sonic for March, April and May, 1977. It found that claimed nontaxable sales of

\$13,082.25 were neither substantiated by resale or exemption certificates nor verified as out-of-state deliveries. Ultra Sonic reported nontaxable sales of \$17,338.23 for the same period. The Audit Division determined a 75.45 percent rate of disallowance of nontaxable sales claimed for that period. The Audit Division applied this percentage of disallowance to nontaxable sales claimed for the period June 1, 1975 to August 31, 1978, which resulted in a disallowance of \$207,946.00 in nontaxable sales and a taxable sales percentage of 85.4 percent. The Audit Division applied 85.4 percent to gross sales for September 1, 1978 to December 20, 1978 and thereby disallowed an additional \$3,676.00 in nontaxable sales claimed for that period. The Audit Division held total additional taxable sales of \$211,622.00 subject to tax of \$15,594.23 based on the audit.

The Audit Division reviewed expense purchases made by petitioner for the month of April, 1977. It found taxable purchases made in the amount of \$404.22 on which no sales tax was paid. It determined a percentage of expense purchases subject to use tax based on gross sales of 3.98 percent for that period. It applied 3.98 percent the gross sales reported of \$482,384.00 and determined \$19,198.00 in purchases subject to use tax and use tax due of \$1,403.59 for the audit period.

The Audit Division thereby determined the total sales and use tax deficiency of \$16,977.82 for petitioner corporation and sales tax deficiency of \$15,594.23 for William J. Stahl.

6. Pursuant to a conference held, petitioner made available all sales ledger cards which were examined in detail for the audit period. Upon examination of all the sales records, a reduction in tax due on additional taxable sales was made to \$4,252.54. The Audit Division also conceded that the use tax

due on expense purchases should be reduced to \$32.34, the amount found due in the test period of April, 1977.

The remaining sales at issue are as follows:

<u>Purchaser</u>	<u>Exempt Sales Disallowed</u>
a.) All Record Dist.	\$ 308.75
b.) Arrest Recording	1,196.89
c.) Charles J. Brucia	18,741.95
d.) Cherry Lane Music Co.	1,205.50
e.) June Claire School of Dance	1,228.06
f.) Lutheran Youth Encounter	3,033.47
g.) Our Lady of Mercy Folk Group	461.25
h.) Phonogram	8,977.87
i.) Sunburst Yellow & Orange	7,187.96
j.) Ultra Sonic Productions, Inc.	22,125.85
	<u>\$64,467.55</u>

7. Petitioner had properly completed resale or exemption certificates or other substantiation sufficient to warrant a further reduction to additional taxable sales as follows:

<u>Purchaser</u>	<u>Substantiation</u>	<u>Sales</u>
a.) All Record Dist., Inc.	Resale	\$ 308.75
c.) Charles J. Brucia	Resale	18,741.95
e.) June Claire School of Dance	Resale	1,228.06
g.) Our Lady of Mercy Folk Group	Ex. Org.	461.25
h.) Phonogram, Chicago, Ill.	Out-of-State Delivery	8,977.87
i.) Sunburst Yellow & Orange	Ex. Org.	7,187.96
j.) Ultra Sonic Productions, Inc.	Resale	22,125.85
		<u>\$59,031.69</u>

8. Although petitioner contended that the balance of additional taxable sales of \$5,435.86 were sales delivered out of state for resale (Items b. and d. in Finding of Fact "6") or delivered out of state to an organization exempt under section 1116 of the Tax Law (Item f.), no substantial evidence was adduced.

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 mentioned in section 1105(a) of the Tax Law are subject to tax until the contrary is established, and the burden of proof that any receipt is not taxable hereunder shall be upon the person required to collect tax or the customer. Unless (1) a vendor shall have taken from the purchaser a certificate in such form as the Tax Commission may prescribe, to the effect that the property or service was purchased for resale or (2) the purchaser prior to taking delivery, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the Tax Commission may require demonstrating that the purchaser is an exempt organization described in section 1116, the sale shall be deemed a taxable sale at retail. Where such a certificate or statement has been furnished to the vendor, the burden of proving that the receipt is not taxable hereunder shall be solely upon the customer. The vendor shall not be required to collect tax from purchasers who furnish a certificate of resale or an exempt organization statement in proper form.

B. That the field audit results are reduced as conceded by the Audit Division pursuant to Finding of Fact "6".

That petitioners have sustained the burden of proof that additional receipts amounting to \$59,031.69 were not taxable under section 1105(a) of the Tax Law pursuant to Finding of Fact "7".

C. That the petition of Ultra Sonic Recording Studios, Inc. and William J. Stahl as officer is granted to the extent indicated in Conclusion of Law "B" above; that the Audit Division is directed to accordingly modify the notices of determination and demand for payment of sales and use taxes due issued July 20,

1979 with applicable penalty and interest thereon; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

P 389 758 598
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Ultra Sonic Recording Studios, Inc. and William J. Stany, Officer</i>	
Street and No. <i>87 Mulberry Avenue</i>	
P.O., State and ZIP Code <i>Garden City, NY 11530</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

P 389 758 599
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Charles R. Fausel</i>	
Street and No. <i>P.O. Box 434, 2 Grant St.</i>	
P.O., State and ZIP Code <i>Tuckahoe, NY 10707</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