

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

December 31, 1984

Janice Blodnick  
Officer of Precision Maintenance Corp.  
28 Bucknell Dr.  
Plainview, LI, NY 11803

Dear Ms. Blodnick:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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  
Steven M. Coren  
485 Madison Ave.  
New York, NY 10022  
Taxing Bureau's Representative

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

December 31, 1984

Myrna Kanter  
Officer of Precision Maintenance Corp.  
10 Huntington Hill Rd.  
Woodbury, LI, NY 11797

Dear Ms. Kantor:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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.

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Steven M. Coren  
485 Madison Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Janice Blodnick :  
Officer of Precision Maintenance Corp. :  
:  
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 12/1/76-8/31/80. :

AFFIDAVIT OF MAILING

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Myrna Kanter :  
Officer of Precision Maintenance Corp. :  
:  
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 12/1/76-8/31/80. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Myrna Kanter, Officer of Precision Maintenance Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Myrna Kanter  
Officer of Precision Maintenance Corp.  
10 Huntington Hill Rd.  
Woodbury, LI, NY 11797

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

Page 2

Affidavit of Mailing

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  
31st day of December, 1984.

David Parshuck

Nicola J. Williams

Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Janice Blodnick :  
Officer of Precision Maintenance Corp. :  
:  
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 12/1/76-8/31/80. :

AFFIDAVIT OF MAILING

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In the Matter of the Petition :  
of :  
Myrna Kanter :  
Officer of Precision Maintenance Corp. :  
:  
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 12/1/76-8/31/80. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Janice Blodnick, Officer of Precision Maintenance Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Janice Blodnick  
Officer of Precision Maintenance Corp.  
28 Bucknell Dr.  
Plainview, LI, NY 11803

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

Page 2

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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Janice Blodnick :  
Officer of Precision Maintenance Corp. :  
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 12/1/76-8/31/80. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :  
of :  
Myrna Kanter :  
Officer of Precision Maintenance Corp. :  
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 12/1/76-8/31/80. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of December, 1984, he served the within notice of Decision by certified mail upon Steven M. Coren, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steven M. Coren  
485 Madison Ave.  
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

Page 2

Affidavit of Mailing

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  
31st day of December, 1984.

David Parschuck

Nicola J. Williams

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 :  
JANICE BLODNICK, :  
Officer of :  
PRECISION MAINTENANCE CORP. :  
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 December 1, :  
1976 through August 31, 1980. :

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In the Matter of the Petition :  
of :  
MYRNA KANTER, :  
Officer of :  
PRECISION MAINTENANCE CORP. :  
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 December 1, :  
1976 through August 31, 1980. :

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Petitioner Janice Blodnick, officer of Precision Maintenance Corp., 28 Bucknell Drive, Plainview, New York 11803, 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 December 1, 1976 through August 31, 1980 (File No. 33073).

Petitioner Myrna Kanter, officer of Precision Maintenance Corp., 10 Huntington Hill Road, Woodbury, New York 11797, 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 December 1, 1976 through August 31, 1980 (File No. 33185).

A consolidated formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 26, 1984 at 1:15 P.M. Petitioners appeared by Steven M. Coren, P.C. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

### ISSUES

I. Whether petitioners are personally liable for the sales tax obligations of Precision Maintenance Corp. for the period December 1, 1976 through August 31, 1980.

II. Whether the consent extending the period of limitations on assessment executed on behalf of Precision Maintenance Corp. was invalid, compelling the cancellation of those portions of the assessments for the period December 1, 1976 through August 31, 1977 as untimely issued.

III. Whether the assessments should be reduced to take account of repair services performed under warranties given by a third party manufacturer, and a fire which allegedly destroyed virtually the entire business premises of Precision Maintenance Corp.

### FINDINGS OF FACT

1. On December 19, 1980, the Audit Division issued to Precision Maintenance Corp. ("Precision") two notices of determination and demands for payment of sales and use taxes due for the period December 1, 1976 through August 31, 1980 in the amount of \$143,392.20, plus penalty of \$29,825.55 and interest of \$34,346.66, for a total of \$207,564.41. Each notice contained the following explanation: "Since you have not submitted your records for audit as required by Section 1142 of the Tax Law, the...taxes are determined to be due in accordance with the Tax Law, and are based upon available records and information." The

Audit Division treated as taxable all gross sales reported by Precision during the period under consideration.

On December 19, 1980, the Audit Division issued to petitioner Janice Blodnick, as an officer of Precision, two notices of determination and demands for payment of sales and use taxes due for the period December 1, 1976 through August 31, 1980 in the amount of \$143,392.20, plus penalty of \$29,825.55 and interest of \$34,346.66, for a total of \$207,564.41.

On December 19, 1980, the Audit Division issued to petitioner Myrna Kanter, as an officer of Precision, two notices of determination and demands for payment of sales and use taxes due for the period December 1, 1976 through August 31, 1980 in the amount of \$143,392.20, plus penalty of \$29,825.55 and interest of \$34,346.66, for a total of \$207,564.41.

2. Precision was engaged in the business of repairing televisions, including sets which were manufactured and guaranteed by Zenith Corporation ("Zenith"). Precision billed and was compensated by Zenith for repair work performed under Zenith warranties. Petitioners allege that substantially all the repair services rendered were performed under warranties and as such, the services were nontaxable.

3. Prior to September 1, 1978, all the outstanding stock of Precision, consisting of four shares, was owned by Mr. Stanley Schaffel. Prior to September 1, 1978, Precision retained the partnership of Kanter, Blodnick & Haber as its attorney; partner Myron Kanter is the husband of petitioner Myrna Kanter, and partner Edward Blodnick is the husband of petitioner Janice Blodnick. (Messrs. Kanter and Blodnick are no longer partners in the same firm.)

4. On September 1, 1978, petitioners purchased the outstanding shares of Precision from Mr. Schaffel for \$35,000.00 "plus a non-cancellable employment

contract for \$1,000.00 a week for 26 weeks and \$600.00 for 162 weeks as herein-after provided." The terms of the sale agreement were established by a letter dated August 18, 1978 to Mr. Schaffel from petitioners; the letter stated, in pertinent part:

"You [Mr. Schaffel] shall be responsible for all taxes, including but not limited to sales tax and payroll taxes for the periods prior to September 1, 1978 and it shall be your obligation to timely file same and pay same.

All loans from you to the corporation are cancelled.

The following are included in sale without adjustment:

1. All work in process;
2. All inventory;
3. All personal property owned by the corporation;
4. All receivables as of the end of business on August 31, 1978, except for Zenith and Dealer Antenna work for the period ending August 31, 1978."

All funds for the purchase were provided by Messrs. Kanter and Blodnick.

According to Mr. Blodnick's testimony, the Precision stock was purchased and held in petitioners' names for the following reason: "[S]ince we were lawyers, Myron and I, and we felt there were certain ethical problems with us (sic) getting involved in a T.V. repair business, we didn't feel it was quite appropriate, we agreed that our wives would serve as, so to speak, 'dummies' in the corporation and would be the holders of record of the stock...".

5. Petitioners are homemakers. They were nominal officers of Precision who did not perform any duties for the corporation. Indeed, petitioners never entered the Precision business premises. Upon their husbands' requests, petitioners unquestioningly signed the sale agreement and the other corporate documents whereby they became shareholders and officers.

6. Messrs. Kanter and Blodnick hired two managers, Al Gluck and David Leiberman, to supervise the Precision personnel in all phases of their work.

These managers bore the responsibility, therefore, for overseeing the daily business operations of Precision. Messrs. Kanter and Blodnick also hired a bookkeeper whose duties included, among other things, remitting payment to creditors and reconciling the corporate bank accounts. Mr. Blodnick was responsible for, in his words, "the general cash flow of the business...[to] try to make sure that...everything financially was done properly, that there was enough money to pay bills, that bills were being paid...".

7. Messrs. Kanter and Blodnick and the two managers were authorized to and did sign checks on the Precision accounts. In addition, Messrs. Kanter and Blodnick possessed authority to sign negotiable instruments on the corporation's behalf. With respect to whether they were authorized signatories on any Precision accounts, petitioners' testimony was indefinite.

Counsel for the Audit Division: "When you became an officer, did you sign any statements with the bank on which you indicated that you were an officer of the corporation?"

Mrs. Kanter: "Not that I can recall." (Transcript, p.21.)

\* \* \*

Counsel for petitioners: "Do you know who had the authority to sign the checks?"

Mrs. Blodnick: "No, I don't." (Transcript, p.25.)

8. Petitioners offered no evidence regarding the identity of the person(s) who prepared and signed the sales and use tax returns for the period December 1, 1976 through August 31, 1980. In response to questions by petitioners' representative, Mr. Blodnick stated he was unable to recollect who signed the returns.

9. Sometime in September, 1979, a fire occurred at the Precision business premises which, Mr. Blodnick alleged, destroyed the premises and all equipment and records situated thereat. Mr. Blodnick further alleged that thereafter, business operations were reduced to a level approximately 80 to 90 percent

below that which existed before the fire, and that at least one-half of this lower level of business was transacted in New Jersey.

10. During the period in question, Precision, a Subchapter S corporation, did not realize a profit. Had it been profitable, distributions would have been made to petitioners which distributions would have inured to the benefit of Messrs. Kanter and Blodnick.

11. On or about November 18, 1979, a consent to extend the period of limitations on assessment to December 20, 1980 was executed on behalf of Precision. Petitioners and their spouses all deny having executed said consent and contest its validity.

#### CONCLUSIONS OF LAW

A. That section 1133(a) of Article 28 of the Tax Law imposes on any person required to collect sales tax personal liability for the tax imposed, collected or required to be collected. Section 1131(1), in defining persons required to collect the tax, includes corporate officers who are under a duty to act for the corporation in complying with any requirement of Article 28. The resolution of whether an officer was under such a duty turns upon a factual determination in each instance. The relevant factors in the determination include, but are not limited to, the following: the officer's day-to-day responsibilities in the corporation; the officer's involvement in and knowledge of the financial affairs of the corporation; the identity of the person who prepared and signed the sales and use tax returns; the officer's authority to sign checks on the corporation's accounts; and in the case of a closely held corporation, the benefits the officer received from corporate profits. Vogel v. N.Y.S. Dept. of Taxation, 413 N.Y.S.2d 862 (Sup. Ct. Monroe Co. 1979); Chevlowe v. Koerner, 407 N.Y.S.2d 427 (Sup. Ct. Queens Co. 1978).

B. That prior to September 1, 1978, the date on which petitioners purchased all the outstanding stock of Precision, they were not persons required to collect tax. The assessments against them for the period December 1, 1976 through August 31, 1978 are accordingly cancelled.

C. That for the remainder of the period at issue, petitioners were persons required to collect tax, and personal liability for the sales tax obligation of Precision was properly imposed upon them. Petitioners were the sole shareholders of Precision who, if the corporation had turned a profit, would have shared equally therein. Petitioners were apparently the sole corporate officers and have failed to carry their burden of proof to establish that (1) they were not authorized signatories on the corporate accounts, (2) they did not sign corporate checks, and (3) they did not sign the sales and use tax returns submitted by Precision. Finally, it would appear that petitioners attempted to absolve themselves of all responsibility for corporate financial affairs, including sales tax obligations, by delegating their authority to their husbands, who evidently were neither officers nor employees; such a course of action simply cannot be sanctioned.

D. That in view of Conclusion "B", the second issue is rendered moot.

E. That petitioners failed to produce any documentation whatsoever which would support a reduction in the assessments, by reason of sales of services for resale, or by reason of a falling off in business. The Audit Division is directed to credit petitioners with any tax previously remitted by Precision.

F. That the petitions of Janice Blodnick and Myrna Kanter, as officers of Precision Maintenance Corp., are granted to the extent indicated in Conclusions "B" and "E"; the assessments issued on December 19, 1980 are to be modified

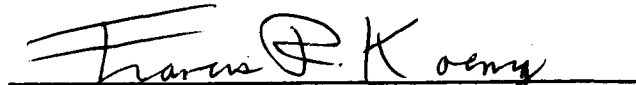
accordingly; and except as so modified, the assessments are in all other respects sustained.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



P 470 315 371

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Janice Blodnick</i>	
Street and No. <i>Off. of Precision Maintenance Corp</i>	
P.O., State and ZIP Code <i>28 Bucknell Drive</i>	
Postage <i>Plainville, CT, 06061</i>	\$ <i>1.803</i>
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 470 316 370

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Merna Fanteu Offusa</i>	
Street and No. <i>Precision Maintenance Corp</i>	
P.O., State and ZIP Code <i>70 Huntington Hill Rd</i>	
Postage <i>Woodbury, CT, 06797</i>	\$ <i>1.797</i>
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 470 315 372

RECEIPT FOR CERTIFIED MAIL

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(See Reverse)

Sent to <i>Steven M. Coren</i>	
Street and No. <i>485 Madison Avenue</i>	
P.O., State and ZIP Code <i>NY, NY 10022</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