

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Kathleen Cotter  
d/b/a Cotter's Cafe

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision  
of a Determination or Refund of Sales & Use Tax  
under Article 28 & 29 of the Tax Law for the Period  
3/1/75-12/30/79.

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 Kathleen Cotter d/b/a Cotter's Cafe, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kathleen Cotter  
d/b/a Cotter's Cafe  
215 Covington Rd.  
W. Seneca, NY 14224

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.

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 Parchuck

Nicola J. Williams  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

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under Article 28 & 29 of the Tax Law for the  
Period 3/1/75-12/30/79.

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 William J. Cotter, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William J. Cotter  
5109 Main St.  
Williamsville, NY 14221

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.

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 Parchuck

Nicola J. Williams

Authorized to administer oaths  
pursuant to Tax Law section 174

ABOVE NEW TO STAFFS

STATE TAX 1940

10/11/55 10:00 AM 10:00 AM 10:00 AM

Approved: \_\_\_\_\_

1000 1000 1000 1000

72-1024-10-1 (VAR)-50

Section 3171-1218074  
under Article 28 of the Tax Law for the  
of a determination or finding of fact or law  
for determination of a deficiency or liability

1. What is the purpose of the document?

Media to discuss

[illegible]

TS 1002 R. 60.11.1.2W

12 April 2017

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and by declassification were reviewed for a possible connection with the assassination of President John F. Kennedy. The review was completed on 10/1/80 and the results were reported to the Director of the FBI. The results of the review are as follows:

That defendant further knew and intended to use the same for the purpose of the commission of the crime of kidnapping is established by the evidence.

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1. The first group of people who are involved in the process of the development of the organization are the top management. They are responsible for the overall direction and strategy of the organization. They also have the authority to allocate resources and make decisions that affect the entire organization.

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

December 31, 1984

Kathleen Cotter  
d/b/a Cotter's Cafe  
215 Covington Rd.  
W. Seneca, NY 14224

Dear Ms. Cotter:

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  
William J. Cotter  
5109 Main St.  
Williamsville, NY 14221  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
KATHLEEN COTTER	:	DECISION
D/B/A COTTER'S CAFE	:	
	:	
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 March 1, 1975	:	
through December 30, 1979.	:	

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Petitioner, Kathleen Cotter, 215 Covington Road, West Seneca, New York 14224, 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 March 1, 1975 through December 30, 1979 (File No. 37942).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 24, 1984 at 2:45 P.M., with all briefs to be submitted by June 22, 1984. Petitioner appeared by William J. Cotter, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether petitioner, the purchaser in a bulk sale, is liable for sales taxes determined to be due from the seller in accordance with section 1141(c) of the Tax Law.

FINDINGS OF FACT

1. On December 3, 1979, petitioner, Kathleen Cotter d/b/a Cotter's Cafe, purchased a restaurant business owned and operated by Stone Bridge Cafe, Inc. ("The Corporation"). The Corporation had operated the business from February 17, 1978 to the date of sale. The Corporation purchased the business from Norman

Hageman who operated the Stone Bridge Cafe as a sole proprietorship during the period March 1, 1975 through February 16, 1978.

2. When the business assets were transferred from Hageman to The Corporation, the Audit Division mailed a questionnaire to Hageman requesting certain information concerning the bulk sale. Hageman did not respond to the questionnaire and, consequently, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (#S780330722C) against Hageman on April 14, 1978 covering the period March 1, 1975 through February 16, 1978 for taxes due of \$6,571.21 plus penalty and interest. Hageman neither paid nor protested this assessment.

The aforesaid notice was in addition to five notices and demand for payment of sales and use taxes due that were issued to Hageman for filing returns with no remittance or for penalty and interest charged on the late filing of returns (#'s S0091908363, S0091908364, S0091908365, S0091918900 and S0091974024).

3. On April 14, 1978, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due (#S780330723C) against The Corporation which asserted taxes due of \$7,801.71, plus penalty and interest. Said notice indicated that the taxes were determined due from Stone Bridge Cafe (Hageman) and represented The Corporation's liability as purchaser in accordance with section 1141(c) of the Tax Law. The amount of the assessment was for notices S780330722C and S0091918900 issued to Stone Bridge Cafe. The Corporation did not protest the above assessments.

4. During the period February 17, 1978 through December 3, 1979, in which The Corporation operated the business, it was delinquent in filing sales tax

returns and, as a result, the Audit Division issued notices and demands for penalty and interest.

After the business was sold to petitioner, The Corporation did not respond to a bulk sale questionnaire from the Audit Division regarding the business operations. Because there was no response, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due on December 9, 1980 (#S801202724C) against The Corporation. Said notice assessed taxes due of \$2,835.64 plus penalty and interest for the above period and indicated that, based on a review of returns filed and the failure to submit the information requested, reported taxable sales were increased 25 percent. This assessment was not protested.

5. On September 25, 1980, the Audit Division notified petitioner of a possible claim for New York State and local sales and use taxes from the seller (The Corporation). The notification stated that no distribution of funds or property to the extent of the amount of the State's claim could be made before the following conditions were met:

- "1. The State Tax Commission has determined the seller's liability, if any.
2. Payment of such liability has been made to the State.
3. This office has authorized you to release the funds or property."

Petitioner did not notify the Audit Division of the purchase of the business assets of The Corporation.<sup>1</sup>

6. On December 9, 1980, the Audit Division issued notices of determination and demand for payment of sales and use taxes due (#'s S801202725C and S801202726C) against petitioner covering the period March 1, 1975 through February 29, 1980 for taxes due totalling \$10,637.35, plus penalty and interest.

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<sup>1</sup> The record does not establish when or how the Audit Division was notified of the sale.

Petitioner was held liable for taxes determined due from The Corporation pursuant to section 1141(c) of the Tax Law. Petitioner filed a protest on December 15, 1980.

On February 16, 1982, the Audit Division issued notices of assessment review to The Corporation and petitioner which reduced notice #S801202724C and #S801202726C by \$420.00 based on the deletion of the period ending February 29, 1980.

7. A conference was held on January 27, 1982 with representatives of the Buffalo District Office. Petitioner produced purchase invoices for the months of August, 1979 through November, 1979, a sales contract and certain income statements. From these records, the Audit Division determined that the reported markup by The Corporation was 141 percent. Industry guidelines for this type of operation show that the markup for beer and liquor should be 150 percent and 225 percent, respectively. Therefore, no adjustment was made to the notice. It was also determined from the sales contract that the furniture and fixtures were sold for \$10,000.00 and that the taxes due thereon of \$700.00 were not assessed against The Corporation or petitioner. The conference revealed that The Corporation had been assessed \$420.00 in taxes for the month of December, 1979 when it was no longer in operation.

The bulk sales tax of \$700.00 was assessed against The Corporation and petitioner under separate notices dated February 26, 1982.

8. Three payments have been made on the sales tax liabilities of petitioner's predecessors in interest. The first payment was in February, 1981 in the amount of \$3,167.44. This amount was paid from funds held by Vincent R. DiPasquale as escrow agent on the bulk sale between Hageman and The Corporation and was applied as follows:



<u>Notice #</u>	<u>Amount</u>	<u>Item</u>
S0091908363	\$ 35.91	penalty and interest
S0091908364	245.53	penalty and interest
S0091908365	133.87	penalty and interest
S0091918900	1,230.50	tax
	952.37	penalty and interest
S0091974024	569.26	penalty and interest

On September 14, 1983, a payment of \$1,685.21 was made in satisfaction of assessments against Michael Dickman individually as responsible officer of The Corporation. The assessments were for penalty and interest charges on the late filing of returns. These charges were not included on the notices issued to petitioner. Therefore, the payment of \$1,685.21 does not affect petitioner's liability.

The third payment on the liability of The Corporation resulted from the transmittal of a State Liquor Authority refund check in the amount of \$970.00. The sum of \$934.11 was applied to penalty and interest due on notice #D7901251139. The remaining \$35.89 was applied to penalty and interest due on notice #D7904083051 for the period ending November 30, 1980. However, the penalty and interest due for said period was satisfied with the payment of \$1,685.21 made by Dickman. Therefore, \$35.89 must be reapplied to other liabilities of The Corporation.

9. At the hearing, petitioner conceded her liability for the bulk sales tax of \$700.00 set forth in Finding of Fact "7", supra.

10. Petitioner argued that she was not aware that the sales tax liabilities of The Corporation or its predecessor Hageman existed when the business was purchased. Petitioner further argued that the Audit Division should first attempt to collect the tax from Hageman and The Corporation.

Petitioner offered no evidence to show that there were any additional payments made against the notices referred to above.

CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law provides, in pertinent part, that a purchaser in a bulk sale of business assets must notify the Tax Commission of the proposed sale at least ten days before taking possession of the subject of the sale. Whenever the purchaser fails to give notice to the tax commission as required, or whenever the tax commission informs the purchaser that a possible claim for taxes exist, any sums of money or other consideration which the purchaser is required to transfer over to the seller shall be subject to a first priority right and lien for any such taxes determined to be due from the seller. Within ninety days of receipt of the notice of the sale from the purchaser, the Tax Commission shall give notice to the purchaser of the total amount of any taxes which the state claims to be due from the seller.

For failure to comply with the provisions of section 1141(c) of the Tax Law, the purchaser is personally liable for the payment to the state of any taxes determined to be due from the seller.

B. That petitioner failed to notify the Tax Commission of the sale and transferred funds to the seller prior to being notified of the amount of the state's claim for taxes due from The Corporation. Accordingly, petitioner is personally liable for the payment of such taxes pursuant to section 1141(c) of the Tax Law.

C. That the notices issued against petitioner (#'s S801202725C and S801202726C) shall be adjusted as follows:

- 1) period ending May 31, 1977 should be reduced to \$84.75
- 2) period ending February 29, 1980, \$420.00 should be deleted
- 3) the duplicate payment of \$35.89 should be deducted

D. That the petition of Kathleen Cotter d/b/a Cotter's Cafe is granted to the extent indicated in Conclusion of Law "C"; that in all other respects, the

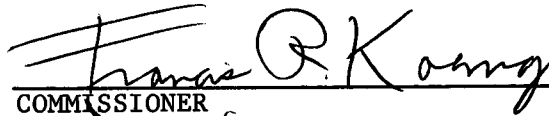
petition is denied and the notices of determination and demand for payment of sales and use taxes due issued December 9, 1980 and February 26, 1982 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 470 316 339

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>William Carter</i>	
Street and No. <i>5109 Main St</i>	
P.O., State and ZIP Code <i>Williamsville NY 14221</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 470 316 338

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>William Carter dpp</i>	
Street and No. <i>Carter Cape</i>	
P.O., State and ZIP Code <i>215 Georgetown Rd.</i>	
Postage	\$ <i>Seaside NY 14233</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