

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Ideal Store Fixture Co., Inc. :  
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 6/1/75-5/31/78. :

AFFIDAVIT OF MAILING

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 9th day of March, 1984, he served the within notice of Decision by certified mail upon Ideal Store Fixture Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ideal Store Fixture Co., Inc.  
533 Empire Blvd.  
Brooklyn, NY 11225

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  
9th day of March, 1984.

*David Parchuck*

*James A. Macdonald*  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Ideal Store Fixture Co., Inc.

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 6/1/75-5/31/78.

AFFIDAVIT OF MAILING

State of New York }  
County of Albany } ss.:

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 9th day of March, 1984, he served the within notice of Decision by certified mail upon Lucille Falcone, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lucille Falcone  
Manus & Weiss  
770 Lexington Ave.  
New York, NY 10021

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  
9th day of March, 1984.

Barriol Parshuch

*Ernest A. Hagerlund*  
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 :  
Ideal Store Fixture Co., Inc. :  
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 6/1/75-5/31/78. :  
\_\_\_\_\_:

AFFIDAVIT OF MAILING

State of New York }  
County of Albany } ss.:

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 9th day of March, 1984, he served the within notice of Decision by certified mail upon William Abramson 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 Abramson  
Bachmann, Schwartz & Abramson  
1290 Avenue of the Americas  
New York, NY 10019

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  
9th day of March, 1984.

David Parchuck

James P. H. H. H.  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 9, 1984

Ideal Store Fixture Co., Inc.  
533 Empire Blvd.  
Brooklyn, NY 11225

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, 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  
Lucille Falcone  
Manus & Weiss  
770 Lexington Ave.  
New York, NY 10021

AND

William Abramson  
Bachmann, Schwartz & Abramson  
1290 Avenue of the Americas  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

IDEAL STORE FIXTURE CO., 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 June 1, 1975 through :  
May 31, 1978.

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Petitioner, Ideal Store Fixture Co., Inc., 533 Empire Boulevard, Brooklyn, New York 11225, 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 May 31, 1978 (File No. 25699).

A formal hearing was commenced before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on December 1, 1982 at 9:15 A.M., and was continued to conclusion before the same Hearing Officer at the same location on February 7, 1983 at 2:00 P.M., with all briefs to be submitted by June 20, 1983. Petitioner appeared by Weiss, Blutrich, Falcone & Miller, Esqs. (Lucille Falcone, Esq., of counsel), and by Bachmann, Schwartz & Abramson, CPA's (William I. Abramson, CPA). The Audit Division appeared by Paul B. Coburn, Esq., (Anne W. Murphy, Esq., of counsel).

ISSUES

I. Whether the balance in petitioner's general ledger sales tax payable account as of the beginning of the audit period was properly assessed as due on audit.

II. Whether the Audit Division properly determined on audit that certain sales, or portions thereof, reflected by petitioner as nontaxable, were subject to tax.

FINDINGS OF FACT

1. On September 7, 1978, the Audit Division issued to petitioner, Ideal Store Fixture Co., Inc. ("Ideal"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$450,000.00, plus penalty and interest. This assessment reflected an estimate of Ideal's sales and use tax liability, issued as such since Ideal's books and records had not been made available to the Audit Division, as requested, for audit. On June 29, 1978, Ideal, by its president, Charles Raffa, had executed a consent allowing the assessment of sales and use taxes due for the period June 1, 1975 through May 31, 1978 to be made at any time on or before June 20, 1979.

2. Ideal filed a timely protest with regard to the above-estimated assessment and, as the result of a pre-hearing conference, an audit of Ideal's books and records was performed and the above-estimated assessment was reduced to \$185,910.79, plus penalty and interest.

3. Ideal was, during the period at issue, engaged in the business of supplying and installing store fixtures, including freezers, air conditioners, compressors, refrigerated meat and vegetable cases, etc. Ideal operated its business on a fiscal year ending September 30, used the accrual method of accounting, and, at the time of audit, had been in business for approximately forty-eight years.

4. The Audit Division's auditor, Anthony Vano, utilized Ideal's sales journal, sales and purchase invoices, cancelled checks, Federal tax returns and New York State sales tax returns in conducting the audit. No test periods or

projections therefrom were used in arriving at the assessment of \$185,910.79, which consists of two major portions determined as follows:

- a.) Mr. Vano reviewed each of Ideal's sales invoices for the entire audit period. Certain invoices reflected sales recorded by petitioner as totally or partially nontaxable. Mr. Vano redetermined that some of these sales were in part or in whole subject to tax and computed the tax due on such sales. Tax asserted as due for the audit period, consisting of the total tax originally calculated by Ideal on its invoices plus the additional tax redetermined by Mr. Vano on review of the invoices, equalled \$50,493.77. This amount was reduced by \$7,953.30 in sales tax paid by Ideal during the audit period (per Ideal's returns as verified by cancelled checks), thus leaving an asserted deficiency of \$42,540.47;<sup>1</sup>
- b.) Mr. Vano also noted a credit balance in Ideal's general ledger New York sales tax payable account as of the June 1, 1975 commencement of the audit period. Unable to gain an explanation from Ideal as to why this credit balance should not be considered an outstanding liability owed to New York, Mr. Vano took the opening balance in this account as of the October 1, 1974 beginning of the fiscal year during which the audit started, adjusted this balance to reflect decreases for payments made (debits) and increases for sales tax posted by Ideal on taxable sales (credits) between October 1, 1974 and June 1, 1975, and thus arrived at a June 1, 1975 opening (credit) balance of \$148,378.04. This opening balance was reduced by \$5,007.72, allowed as the tax due on taxable sales shown by petitioner to have been bad debts, resulting in an asserted liability for sales tax payable of \$143,370.32.

5. Mr. Vano testified that his redetermination concerning the taxability of some of the allegedly nontaxable sales per Ideal's invoices was made during a conference with Ideal's former accountant, Maurice Baer. A finding of taxability was determined after consideration of all the evidence presented

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<sup>1</sup> Mr. Vano traced the amounts of tax reflected by Ideal on its invoices to Ideal's sales journal and general ledger New York sales tax payable account to verify that such amounts were posted.

with regard to each invoice questioned, including some certificates of capital improvement, some conditional sales contracts, and the actual invoices' descriptions of the work involved. He did not compile a list of each individual invoice changed nor the reason for the change in each case, and stated the absence of a capital improvement certificate, though a factor, did not automatically result in a decision to change an invoice from nontaxable to taxable. Mr. Vano's reasons for changing a nontaxable sale invoice to partly or completely taxable were either that the work involved did not constitute a capital improvement, or that alleged out-of-state sales were not shipped out-of-state (but were picked up in New York). Mr. Vano reviewed substantiation presented on each questioned invoice with Mr. Baer, and in some cases agreed the sale was nontaxable while in others he felt there was insufficient substantiation to support the claimed nontaxability.

6. Similarly, with regard to the \$5,007.72 adjustment allowed for tax on taxable sales claimed as bad debts, Mr. Vano requested information and substantiation on any sale where a bad debt was claimed by Ideal. He based his allowance on those bad debts arising from taxable sales which, through a check of Ideal's ledger cards and cash receipts, reflected that no payment was received. Such allowance was determined and reviewed during a conference with Mr. Baer.

7. Petitioner asserts, with regard to the redeterminations made to various invoices, that this involved a "judgement call" by Mr. Vano and that his perception of the nature of petitioner's business may not have been accurate and thus may have led to improper determinations of taxability. Petitioner also asserts that it is impossible to refute the audit findings on changed invoices because Mr. Vano did not keep a list of the reasons for changes made



to individual invoices. Petitioner maintains it would be impractical to review its invoices for the entire period to determine and challenge each changed invoice.

8. Petitioner introduced copies of two conditional sales contracts pertaining to work done for two different customers. According to testimony by petitioner's present accountant, Mitchell Tanner, these two contracts were representative of the work performed by Ideal. These contracts were among those Mr. Vano found fully taxable, were "pulled out" of Ideal's records at the request of Ideal's representative and provided, as to the items supplied and service performed, as follows:

"A) Customer: Little Village Meat Market, Nassau, Inc.

1. One (1) - Walk-in box with blower and compressor  
6 X 12 connected to a 1 H.P. air and water cooled unit.
2. One (1) - Produce walk-in box with blower and compressor  
6 X 10 connected to 3/4 H.P. air and water cooled unit.
3. One (1) - 12Ft. refrigerated vegetable case with compressor
4. Two (2) - 8Ft. 3-shelf vegetable cases with compressor
5. Two (2) - 10Ft. meat cases with compressor  
(ALL OF THE ABOVE IS USED)
6. Deliver and set the above equipment
7. Hook-up the refrigeration compressors for the above
8. Furnish and install air/cooled condensing unit to be mounted on roof of one story building at rear of store.
9. The existing two (2) - 5 H.P. compressors (One (1) - on frozen food case and one (1) - on meat case) shall be connected to air/cooled condenser on roof.
10. One (1) - Year service on the above.
11. No electric or plumbing work included"

"B) Customer: Savhar Corp.

1. One(1) - 24Ft. 3-shelf fruit stand plus the bottom with mirror and flourescent lights.
2. Relocate two (2) - 12Ft. wall shelves
3. 32 Ft. 3-shelf freezer
4. Two (2) - 20Ft. steel adjustable gondolas

5. 6 door 12Ft. long ice/cream case
  6. 3 compressors, one (1) for the ice/cream case, and two (2) for frozen food.
  7. Delivered and set
  8. Remove fixtures and dump
  9. Plumbing hook-up
  10. Refrigeration and electric hook-up
  11. Relocate the 12Ft. single duty freezer
  12. Make opening in two (2) brick walls and furnish steel angle iron on the top and supply one (1) - door
  13. Two (2) - 16Ft. 2-shelf plus bottom fruit display
  14. Relocate two (2) - steel gondolas
  15. 8Ft. delicatessen case completely installed
  16. 12Ft. 3-shelf meat case completely installed
  17. Use venders (sic) compressors where possible
- All of the above is slightly used with one (1) year guarantee on the equipment. Most of this work to be done after business hours."

9. Nothing further concerning these two contracts or the manner in which Ideal carried on its business was specified through testimony or other evidence. Ideal's president, Charles Raffa, was present at the hearing but did not testify.

10. Ideal asserts that the credit balance in the sales tax payable account did not in reality represent a balance of tax due and owing to New York. Ideal asserts that bad debts, in addition to those for which credit was allowed, existed and should have been allowed. Specifically, Ideal claimed that certain adjusting journal entries reflected additional bad debt expense for which tax credit was not allowed, and which, if allowed, would entirely cancel the reflected tax liability in the account. Such entries were included in adjusting journal entries as debits increasing bad debt expense and credits decreasing accounts receivable.<sup>2</sup> Said entries reflected bad debts of \$64,715.45 for the fiscal year ended September 30, 1977, and \$418,456.00 for fiscal year ended

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<sup>2</sup> Ideal used the direct write off method (rather than an allowance for doubtful accounts system) for bad debts.

September 20, 1978, and were allegedly taken to adjust books to schedule. No further specifics concerning the method of computing these adjusting entries or the basis for the bad debts were provided by petitioner, nor was any breakdown of the alleged bad debts as to the taxability or nontaxability of the underlying sales specified.

11. In addition to the foregoing, an adjusting journal entry for the fiscal year ended September 30, 1978 reflected a debit to New York Sales Tax Payable of \$169,176.41, a debit to New Jersey Sales Tax Payable of \$8,488.65 and a credit to bad debts of \$177,665.06. This entry's stated purpose was "to reclassify and adjust to current liability". No further specific explanation of this entry was offered by petitioner.

12. Ideal asserts the result of these adjusting entries was to adjust and correct the books as of September 30, 1978, that such entries are common and are not necessarily given to a company's bookkeeper to enter on the books and that these entries tie into the Federal tax returns as filed and are the catch up or culmination of prior years actions and entries not made in the books.

13. Ideal asserts the bad debts were not reflected on the books because Ideal did not want to reflect its bad debts on financial statements reviewed by its bankers. It was further alleged that the sales tax payable account credit balance did not necessarily reflect sales tax payable but could have also included price adjustments or other allowances, imputed interest on accounts, deferred income on installment sales and other unadjusted items as accumulated on the books. It was stated that Ideal's former accountant "couldn't tie it all together" and thus adjusted it out as per the foregoing (i.e. all through the bad debt entry specified in Finding of Fact "12").

14. Ideal also asserts that the balance in the sales tax payable account may not properly be included as part of the deficiency since it is barred by operation of the statute of limitations. The Audit Division asserts that petitioner carried this amount forward and reflected it on the books at the start of the audit period, and thus it was a current liability and not barred from inclusion in the assessment. No allegation of fraud or wilfull intent to evade taxes was raised by the Audit Division, nor was there any proof that sales tax returns were not filed, or were untimely.

#### CONCLUSIONS OF LAW

A. That subdivision (b) of section 1147 of the Tax Law provides, in part, that "except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of the return."

B. That there was no evidence presented to show that returns required to be filed by petitioner for periods prior to June 1, 1975, were wilfully false or fraudulent or were not filed. Accordingly, that portion of the deficiency due to the opening balance in petitioner's sales tax payable account as adjusted (\$143,370.32), was beyond the allowable period for assessment and is cancelled (Matter of Fontainebleau Novelties, Inc., State Tax Comm., April 27, 1983).

C. That the various arguments advanced by petitioner with regard to the remaining portion of the assessment are not supported by such evidence as would warrant reduction or cancellation of the audit result. Petitioner argues that the auditor may have misinterpreted the nature of its business, yet petitioner provided little evidence pertaining to the specifics of its operation. The two conditional sales contracts submitted alone do not support the proposition that the items specified in said two contracts (and alleged to have been representative

of items supplied and/or installed in general by petitioner), constituted permanent installations becoming integral parts of the buildings and thus not subject to tax. Nor has the extent of the construction and renovation work performed by petitioner been in any manner detailed. Petitioner maintains it does not know which invoices were changed or why they were changed. However, each particular invoice changed by the auditor was discussed with petitioner's former accountant, and the two reasons which would cause a change were given (see Finding of Fact "5"). Petitioner's further argument that it could not determine what portion of the assessment was due to changed invoices and what portion was due to unremitted (but billed) taxes is unfounded. Total tax billed originally by petitioner per its invoices (and presumably posted to its sales tax payable account) less tax actually remitted by petitioner would equal the portion of the \$42,540.47 assessment due to unremitted tax, with the remaining portion due to changed invoices. Finally, it is noted that petitioner has not provided evidence of tax remitted during the audit period in excess of the amount of tax allowed as a credit by the auditor (\$7,953.30).

D. That the petition of Ideal Store Fixture Co., Inc. is granted to the extent indicated in Conclusion of Law "B", but is in all other respects denied, and the Notice of Determination and Demand dated September 7, 1978, as revised upon field audit and as modified herein, together with such penalty and interest as may be lawfully owing, is sustained.

DATED: Albany, New York

MAR 09 1984

STATE TAX COMMISSION

Radmich A. Chas  
PRESIDENT  
Francis R. Koenig  
COMMISSIONER  
Mark J. Med / mda  
COMMISSIONER

P 470 315 265

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>William Abramson</i>	
Street and No. <i>1290 Avenue of the Americas</i>	
P.O., State and ZIP Code <i>NY, NY 10019</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 470 315 264

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Lucille Falcone</i>	
Street and No. <i>770 Lexington Ave.</i>	
P.O., State and ZIP Code <i>NY, NY 10021</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 470 315 263

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Isabel Stone Sistrup</i>	
Street and No. <i>533 Empire Blvd.</i>	
P.O., State and ZIP Code <i>Brooklyn, NY 11225</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	