

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Peter T. Jensen	:	
	:	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 12/1/73 - 2/29/76.	:	

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 21st day of September, 1984, he served the within notice of Decision by certified mail upon Peter T. Jensen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter T. Jensen
401 E. 68th St.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
21st day of September, 1984.

David Parchuck

William A. Haggenmull
Authorized to administer oaths
pursuant to Tax Law section 174

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

September 21, 1984

Peter T. Jensen
401 E. 68th St.
New York, NY 10021

Dear Mr. Jensen:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER T. JENSEN	:	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 December 1,	:	
1973 through February 29, 1976.	:	

Petitioner, Peter T. Jensen, 401 East 68th Street, New York, New York 10021, 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, 1973 through February 29, 1976 (File No. 38909).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 25, 1984 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly estimated petitioner's tax liability on the basis of external indices.

II. Whether the Audit Division's assessment of additional taxes due was barred by the Statute of Limitations.

III. Whether the penalty and that portion of interest exceeding the minimum statutory rate asserted against petitioner should be cancelled.

FINDINGS OF FACT

1. Petitioner, Peter T. Jensen, operated a stationery store which sold such items as newspapers, magazines, cigarettes, cards and candy. Petitioner

began business operations on December 1, 1973 and operated as a sole proprietorship until March 1, 1976 at which time he formed J & P Stationery Corp.

The store was located at 884 1st Avenue, New York, New York.

2. On January 10, 1979, J & P Stationery Corp. sold the business to Thomas O'Driscoll. The bulk sale of the business assets initiated an audit of J & P's books and records. The examination revealed that J & P had not filed any sales tax returns and that there were no books and records for audit. The Audit Division estimated taxes due based on sales reported by Mr. O'Driscoll for the periods ending August 31, 1979 and November 30, 1979. J & P agreed to the liability and the taxes due were paid from escrow funds.

3. Petitioner, by letter dated November 25, 1981, advised the Audit Division that he conducted business under the name Peter Jensen Stationery at the same location as J & P Stationery Corp. during the period December 1, 1973 to February 29, 1976. Petitioner indicated that no sales taxes were paid for this period and he wanted to fulfill his sales tax obligations.

4. On June 10, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period December 1, 1973 through February 29, 1976 for taxes due of \$1,088.00, plus penalty and interest of \$1,210.24, for a total of \$2,298.24. Said notice indicated, in part, that the taxes due had been determined in accordance with section 1138 of the Tax Law and were based on an audit of petitioner's books and records.

Petitioner did not maintain books and records for the business operation nor did he file any sales tax returns. Therefore, the Audit Division estimated the taxes due on the same basis as the taxes had been determined against J & P Stationery Corp. (Finding of Fact "2"). However, the Audit Division reduced

taxes due by one-third in each year under audit on the assumption that petitioner increased the business activity from the date of inception.

5. Petitioner did not register with the Department of Taxation and Finance as a vendor for sales tax purposes.

6. Petitioner argued that the assessment was barred by the Statute of Limitations.

Notwithstanding the foregoing, petitioner argued the notice was defective because it stated that the taxes due were based on an audit when no such audit was conducted. In addition, petitioner took the position that it was improper to impose penalty and interest.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides, in pertinent part, that if a return is not filed or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined from such information as may be available. If necessary, the tax may be estimated on the basis of external indices.

Petitioner failed to file sales tax returns for the entire period under review and moreover, failed to maintain books and records as required by section 1135 of the Tax Law. Accordingly, the Audit Division properly determined petitioner's liability pursuant to section 1138(a) of the Tax Law.

B. That section 1147(b) of the Tax Law provides that no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time. Since petitioner failed to file any sales tax returns, the assessment was timely.

C. That section 1145(a)(1)(i) of the Tax Law authorizes the imposition of penalty and interest for failure to file a return or to payover any tax when

due. Subparagraph (ii) of section 1145(a)(1) provides for the remission of penalty and that portion of interest that exceeds the minimum statutory rate if the Tax Commission determines that the failure or delay was due to reasonable cause and not due to willful neglect.

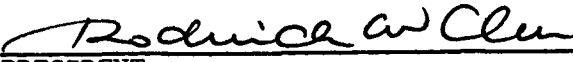
Petitioner failed to register with the Department of Taxation and Finance as required by section 1134 of the Tax Law; he did not maintain books and records or file any sales tax returns. Accordingly, the Audit Division properly imposed penalty and interest.

D. That the petition of Peter T. Jensen is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 10, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

SEP 21 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 168 660

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Peter T. Jensen</i>	
Street and No. <i>101 E. 68th St.</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	