

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
John R. Kaefer  
d/b/a Jack's Texaco :

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:  
Ending 6/30/77.

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 14th day of December, 1984, he served the within notice of Decision by certified mail upon John R. Kaefer, d/b/a Jack's Texaco the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John R. Kaefer  
d/b/a Jack's Texaco  
2085 E. Oakfield Rd.  
Grand Island, NY 14072

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  
14th day of December, 1984.

David Parchuck

James R. Hyatt  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

December 14, 1984

Arthur R. Speaker  
36-20 Bowne St.  
Flushing, NY 11354

Dear Mr. Speaker:

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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN R. KAEFER	:	DECISION
D/B/A JACK'S TEXACO	:	
	:	
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 30, 1977.	:	

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Petitioner, John R. Kaefer d/b/a Jack's Texaco, 2085 East Oakfield Road, Grand Island, New York 14072, 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 30, 1977 (File No. 44477).

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 25, 1984 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

#### ISSUE

Whether the Audit Division gave proper notification to petitioner of its determination of sales tax due.

#### FINDINGS OF FACT

1. Petitioner, John R. Kaefer, doing business as Jack's Texaco, operated a gasoline service station located at 584 Ontario Avenue, Buffalo, New York. The business was sold on June 30, 1977.

2. On or about December 14, 1977, petitioner completed a Bulk Sale Questionnaire and returned it to the Audit Division. Petitioner provided his home address on the questionnaire (2085 East Oakfield Road, Grand Island, New

York 14072). He also indicated that the selling price of furniture, fixtures and equipment was \$6,100.00.

3. On January 10, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period June 30, 1977 for taxes due of \$427.00, plus penalty and interest of \$152.40, for a total of \$579.40.

Said notice indicated that the tax was due on the transfer of tangible personal property in a bulk sale.

4. In approximately April, 1983, petitioner applied for a second mortgage on his personal residence. A title search revealed that the State Tax Commission had filed a warrant for \$704.55 on December 17, 1980, which constituted a lien upon the property. The warrant was for nonpayment of the above notice with updated penalty and interest.

5. On May 3, 1983, petitioner paid \$918.16 (tax - \$427.00, penalty and interest - \$491.16) to satisfy the warrant.

6. Petitioner filed a petition on May 12, 1983 requesting a refund of penalty and interest (\$491.16) on the grounds that he never received the notice of tax due.

The Audit Division took the position that the tax, penalty and interest were finally and irrevocably fixed in that the petition was not timely filed.

7. Petitioner argued that the Audit Division cannot lawfully file a warrant and collect the tax without proper notification.

#### CONCLUSIONS OF LAW

A. That section 1147(a)(1) of the Tax Law provides that any notice authorized or required under the provisions of Article 28 may be given by mailing the same to the person for whom it is intended in a postpaid envelope

addressed to such person at the address given in the last return filed by him or in any application made by him.

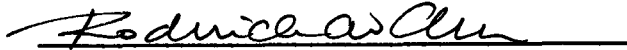
The Audit Division was aware that petitioner sold the business in June, 1977 and was furnished with the correct address of petitioner in the bulk sale questionnaire filed in December, 1977. The mailing of the notice of determination to the business address on January 10, 1979 with knowledge of the correct address of petitioner was not proper notification. Accordingly, the notice is cancelled.

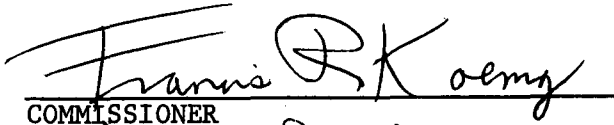
B. That the petition of John R. Kaefer d/b/a Jack's Texaco is granted and the Audit Division is directed to refund the sum of \$918.16.

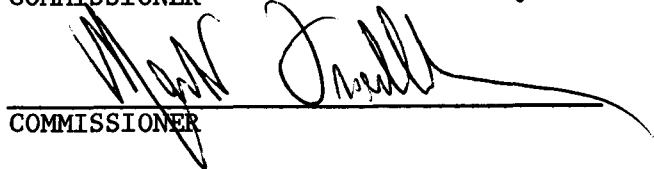
DATED: Albany, New York

STATE TAX COMMISSION

DEC 14 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 470 316 296

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sender's Name <i>John J. Walker</i>	
Street and No. <i>2085 E. Oakfield Rd</i>	
P.O., State and ZIP Code <i>Grand Island NY 14076</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