

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joel M. Kotick : 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 12/1/77 - 5/31/78. :

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 Joel M. Kotick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joel M. Kotick
310 Locust Lane
Roslyn Heights, NY 11577

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 P. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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Period 12/1/77 - 5/31/78.

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 Charles M. Kotick, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles M. Kotick
Robinson, Silverman, Pearce, Aronsohn & Berman
230 Park Ave.
New York, NY 10017

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

Barbara A. Kugel
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 9, 1984

Joel M. Kotick
310 Locust Lane
Roslyn Heights, NY 11577

Dear Mr. Kotick:

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
Charles M. Kotick
Robinson, Silverman, Pearce, Aronsohn & Berman
230 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOEL M. KOTICK	:	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,	:	
1977 through May 31, 1978.	:	

Petitioner, Joel M. Kotick, 310 Locust Lane, Roslyn Heights, New York 11577, 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, 1977 through May 31, 1978 (File No. 36742).

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 June 16, 1983 at 1:15 P.M. Petitioner appeared by Charles M. Kotick, Esq. The Audit Division appeared by John P. Dugan, Esq. (Michael Gitter, Esq., of counsel).

ISSUE

Whether petitioner is liable for tax on the purchases of dental equipment.

FINDINGS OF FACT

1. Petitioner, Joel M. Kotick, practiced dentistry during the period at issue.
2. Petitioner purchased the following dental equipment from M. Steve Jacobson, an independent distributor:

<u>Date</u>	<u>Equipment</u>	<u>Amount</u>
December 12, 1977	5 Alger dental lights	\$ 1,280.00
December 12, 1977	2 Sterident portovacs	744.00
December 12, 1977	5 Dental chairs, stools, trays, syringes	11,407.30
March 14, 1978	1 Siemens Orthoceph	12,500.00
	Total	<u>\$25,931.30</u>

Said equipment was delivered to petitioner at 3000 Hempstead Turnpike, Levittown, New York.

3. Petitioner was not satisfied with certain equipment and withheld payment of \$672.72 to Jacobson. On October 29, 1979, Jacobson sent a letter to petitioner requesting payment and enclosed a letter he intended to send to the Department of Taxation and Finance if payment was not received. The enclosed letter dated November 5, 1979, informed the department that use tax was not paid by petitioner on the dental equipment listed in Finding of Fact "2". Both letters indicated that Mr. Jacobson's address was 4450 S. Park Avenue, Chevy Chase, Md.

4. Upon receipt of Mr. Jacobson's letter, the Audit Division sent an auditor to petitioner's place of business to investigate the allegation. The auditor verified that petitioner did purchase the dental equipment and from available purchase invoices determined that no sales tax was charged by the vendor. Petitioner did not pay use tax directly to New York State.

As a result, on June 20, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for taxes due of \$1,815.17, plus penalty and interest of \$917.64, for a total of \$2,732.81.

5. Petitioner negotiated the purchase of the dental equipment with Mr. Jacobson in New Hyde Park, New York. Petitioner believed that sales tax as

well as delivery and installation charges were included in the purchase price of the equipment.

Petitioner adduced no evidence to establish that sales tax was paid to Mr. Jacobson.

6. The Audit Division reviewed its records and could not find M. Steve Jacobson listed as a registered sales tax vendor.

7. Petitioner acted in good faith at all times and did not willfully attempt to evade the payment of tax.

CONCLUSIONS OF LAW

A. That petitioner purchased tangible personal property at retail and therefore such purchases were subject to the taxes imposed under sections 1105(a) and 1110 of the Tax Law; petitioner failed to pay a sales or use tax on the equipment purchases and accordingly is liable for the tax pursuant to section 1133(b) of the Tax Law.

B. That the sales tax is a "consumer tax", that is, the tax is imposed on the retail sale of tangible personal property and certain services and is collected from the person who purchases at retail - the consumer. The consumer cannot shift the liability for payment of the tax to another person nor otherwise relive himself of such liability, although the vendor is personally liable for the tax he was responsible for collecting [20 NYCRR 525.2(a)(4)].

C. That the penalty is cancelled and interest shall be reduced to the minimum amount prescribed by law.

D. That the petition of Joel M. Kotick is granted to the extent indicated in Conclusion of Law "C"; that in all other respects the petition is denied and

the Notice of Determination and Demand for Payment of Sales and Use Taxes Due
issued June 20, 1980 is sustained.

DATED: Albany, New York

MAR 09 1984

STATE TAX COMMISSION

Rodriguez
PRESIDENT

Francis R Koenig
COMMISSIONER

Mark J. Miller
COMMISSIONER

P 470 315 292

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Charles M. Katick	
Street and No.	
230 Park Ave.	
P.O., State and ZIP Code	
NY, NY 10017	
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 470 315 291

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Charles M. Katick	
Street and No.	
310 Locust Lane	
P.O., State and ZIP Code	
Roslyn Heights, NY 11570	
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