

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
David Lesser :
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 6/1/69 - 8/31/69. :
_____ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

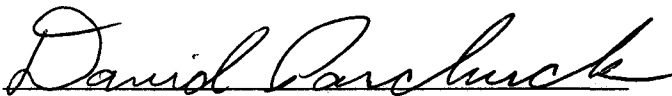
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of March, 1984, he served the within notice of Decision by certified mail upon David Lesser, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

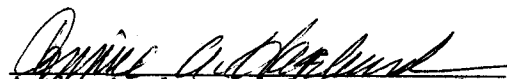
David Lesser
57-36 Little Neck Pkwy.
Little Neck, NY

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.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
David Lesser :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
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Period 6/1/69 - 8/31/69. :
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 Louis Levine, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis Levine
170 Broadway
New York, NY 10038

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

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

March 9, 1984

David Lesser
57-36 Little Neck Pkwy.
Little Neck, NY

Dear Mr. Lesser:

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
Louis Levine
170 Broadway
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID LESSER	:	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, 1969 through August 31,	:	
1969.	:	

Petitioner, David Lesser, 57-36 Little Neck Parkway, Little Neck, Queens County, New York 11362, pursuant to Notice of Petition and Petition, dated June 28, 1979, applied to the Supreme Court of the State of New York, Albany County, for "an order nullifying and setting aside the act of the" State Tax Commission "in its issuance of a Notice and Demand under date of May 8, 1978, for the payment by petitioner of the sum of \$4,483.67 upon a claim for sales tax allegedly accrued in 1969."

Pursuant to stipulation, dated September 22, 1978, by and between the attorney for the petitioner and the Attorney General of the State of New York, the aforesaid proceeding was discontinued without prejudice to renewal and, in lieu thereof, the State Tax Commission agreed to accept the matter for formal hearing as provided for in its Rules of Practice and Procedure.

Accordingly, a formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 25, 1979 at 9:15 A.M. Petitioner appeared by Louis Levine, Esq. The Audit Division appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether the claim against the petitioner as an officer of Bozart Radio & Television, Inc. for the sales tax for the period June 1, 1969 through August 31, 1969, together with interest thereon and penalty, is barred by the statute of limitations set forth in section 1147(b) of the Tax Law.

FINDINGS OF FACT

1. On May 8, 1978, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against the petitioner, David Lesser, for the tax period June 1, 1969 through August 31, 1969, in the sum of \$2,155.61, together with interest thereon in the sum of \$2,220.28 and penalty of \$107.78, for a total of \$4,483.07, on the ground that the petitioner was "...personally liable as officer of Bozart Radio & Television, Inc.,...under sections 1131(1) and 1133(a) of the Sales Tax Law...".

The amount of \$2,155.61 claimed to be due by the Audit Division represents an unpaid balance of tax as shown on a sales tax return which had been filed by Bozart Radio & Television, Inc.

2. During the period at issue, the petitioner was the president of Bozart Radio & Television, Inc. ("Bozart"), a corporation engaged in the retail sale and service of radio, television and stereo equipment, and the sale of some major appliances.

3. On November 26, 1969, Bozart executed an assignment for the benefit of creditors in accordance with the Debtor and Creditor Law of the State of New York.

4. Pursuant to the said assignment for the benefit of creditors, the New York Credit Men's Adjustment Bureau, Inc. was named the assignee. As such assignee, it filed a final account in the office of the Clerk of the Assignment

Bureau of the Supreme Court, Queens County; notified all creditors of Bozart that a final hearing for the judicial settlement of its final account as assignee would be held at Special Term, Part I of said Court on May 8, 1972; and was discharged as said assignee by said Court in July, 1972.

5. The aforesaid Notice of Hearing notifying the creditors of Bozart that the judicial settlement of the final account of the said assignee would be considered at the said final hearing on May 8, 1972, set forth the following summary of the said assignee's final report:

"Summary of Assignee's Final Report:

Receipts	\$10,706.21
Disbursements	8,900.83
Balance	<u>\$ 1,805.38</u>

Claims Filed And Allowed:

Priority	\$16,682.09
General	19,179.88"

6. (a) On February 19, 1970, the Audit Division issued a "Notice and Demand for Payment of Sales and Use Taxes Due" addressed to "Bozart Radio & Television, Inc., 4721 Queens Blvd., Long Island City, N.Y. 11104," claiming a total of \$14,417.78, including interest of \$423.98, for sales and use taxes for the period beginning June 1, 1968 and ending December 17, 1969.

(b) Under date of March 10, 1970, the Department of Taxation and Finance transmitted to the aforesaid assignee, the New York Credit Men's Adjustment Bureau, Inc., a copy of the aforesaid Notice and Demand, dated February 19, 1970, as part of its proof of claim, and for which said claim the State of New York maintained it had a priority over and above all debts of Bozart.

7. The first time that the charge that Bozart had not paid the sales tax for the period at issue was called to petitioner's attention was during the

month of March 1978. The petitioner claimed that the Notice and Demand is at this time barred by the Statute of Limitations, and additionally, having been advanced for the first time 9 years after its alleged accrual, enforcement thereof is unconscionable, unwarranted and unjustified.

8. At the hearing, the petitioner presented evidence that the tax due for the period at issue had been paid by him, plus any penalty and interest which had accrued to the date of payment.

CONCLUSIONS OF LAW

A. That the claim against the petitioner, David Lesser, for the tax period June 1, 1969 through August 31, 1969 is not barred by the three year limitation on assessment provided by section 1147(b) of the Tax Law. Subdivision (b) provides in pertinent part:

"(b) The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the state or the tax commission to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this article. However, 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 a return...".

In this case, the Audit Division was not assessing additional tax but merely seeking to collect a tax as shown due on a sales tax return which had been filed by Bozart Radio & Television, Inc. Accordingly, the three year statute of limitations is inapplicable (Cadalso v. State of New York, Supreme Court, Special Term Albany County, November 27, 1978, (Justice John T. Casey)).

B. That the petitioner, David Lesser, has shown that the tax, penalty and/or interest for the period at issue have been paid (see Finding of Fact "8").

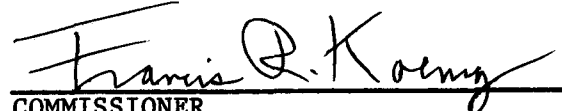
C. That the petition of David Lesser is granted and the Notice and Demand for Payment of Sales and Use Taxes Due, dated May 8, 1978 and addressed to the said petitioner, is cancelled.

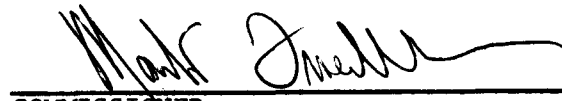
DATED: Albany, New York

STATE TAX COMMISSION

MAR 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 470 315 267

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Louis Levine	
Street and No.	
170 Broadway	
P.O., State and ZIP Code	
NY, NY 10038	
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 470 315 266

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
David Lasser	
Street and No.	
57-36 Little Neck Pkwy	
P.O., State and ZIP Code	
Little Neck, NY	
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