

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Eleanor Leonard :  
d/b/a Leonard Eleanor Interiors : 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 :  
6/1/75-11/30/78. :

---

State of New York }

ss.:

County of Albany }

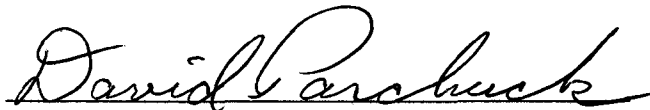
David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 21st day of March, 1984, he served the within notice of Decision by certified mail upon Eleanor Leonard d/b/a Leonard Eleanor Interiors, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

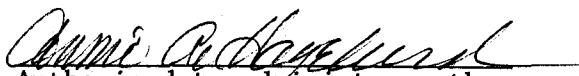
Eleanor Leonard  
d/b/a Leonard Eleanor Interiors  
12 Garden St.  
Great Neck, NY 11020

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 March, 1984.



  
Authorized to administer oaths  
pursuant to Tax Law section 174

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Eleanor Leonard :  
d/b/a Leonard Eleanor Interiors : 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 6/1/75-11/30/78. :

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 21st day of March, 1984, he served the within notice of Decision by certified mail upon Leon A. Kweit, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leon A. Kweit  
Leon A. Kweit & Co.  
150 Broadhollow Rd.  
Melville, NY 11747

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  
21st day of March, 1984.

David Parushok

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

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

March 21, 1984

Eleanor Leonard  
d/b/a Leonard Eleanor Interiors  
12 Garden St.  
Great Neck, NY 11020

Dear Ms. Leonard:

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  
Leon A. Kweit  
Leon A. Kweit & Co.  
150 Broadhollow Rd.  
Melville, NY 11747  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
ELEANOR LEONARD	:	DECISION
D/B/A LEONARD ELEANOR INTERIORS	:	
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 November 30, 1978.	:	

---

Petitioner, Eleanor Leonard, d/b/a Leonard Eleanor Interiors, 12 Garden Street, Great Neck, New York 11020, 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 November 30, 1978 (File No. 28665).

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 July 19, 1983 at 10:45 A.M. Petitioner appeared by Leon A. Kweit, CPA. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopelitto, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from petitioner based on an examination of available books and records.

FINDINGS OF FACT

1. Petitioner, Eleanor Leonard, d/b/a Leonard Eleanor Interiors, was an interior designer. Petitioner also sold and installed tangible personal property in conjunction with the rendition of her design services.

2. On April 20, 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 1, 1975 through November 30, 1978 for taxes due of \$20,267.74, plus penalty and interest of \$8,081.16, for a total of \$28,348.90. The taxes due on said notice were estimated because petitioner did not provide books and records for audit.

3. The Audit Division issued a Notice of Assessment Review to petitioner which revised the taxes due to \$6,049.93 plus penalty and interest of \$3,168.83 for a total of \$9,218.76. Said revision was based on petitioner's cash receipts journal for the period March 1, 1977 through February 28, 1978. The cash receipts totaled \$99,287.36. Sales taxes reported due for this period of \$4,794.17 was deducted from the cash receipts, leaving a balance of \$94,493.19 which the Audit Division considered gross sales. Petitioner did not provide any substantiation for any nontaxable sales and therefore the Audit Division held all sales taxable. Petitioner reported taxable sales of \$62,185.00 for the above period, leaving additional taxable sales of \$32,308.19 or an increase of 51.95 percent. This percentage was applied to reported taxable sales for the audit period to determine total additional taxable sales of \$81,313.00 and taxes due thereon of \$6,049.93.

4. At the hearing, petitioner submitted sales invoices for the entire period under review and an analysis of such invoices showing the following results:

gross sales	\$251,699.20
taxable sales	167,134.06
nontaxable sales	84,565.14
sales tax due	12,449.11
sales tax paid	11,814.60
additional taxes due	634.51

5. Petitioner substantiated nontaxable sales of \$84,265.14 which consisted of design fees, consultation fees, delivery and shipping charges, supervision

and out-of-state deliveries. Petitioner erroneously included a taxable installation charge of \$300.00 in the nontaxable sales category of its analysis.

6. Petitioner acted in good faith at all times and did not willfully neglect to pay over the taxes at issue.

CONCLUSIONS OF LAW

A. That since the books and records provided by petitioner for audit were incomplete and insufficient, the Audit Division properly estimated petitioner's tax liability in accordance with the provisions of section 1138(a) of the Tax Law. The Audit Division reasonably calculated petitioner's liability with the limited information available at the time of audit and the burden of showing that the determination was erroneous rests with petitioner (Matter of Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 A.D. 2d 858).

B. That petitioner demonstrated by the evidence set forth in Finding of Fact "5" that it made nontaxable sales of \$84,265.14. Accordingly, the additional taxes due are reduced to \$655.51 (\$634.51 & 21.00 on disallowed nontaxable sale).

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

D. That the petition of Eleanor Leonard d/b/a Leonard Eleanor Interiors is granted to the extent indicated in Conclusions of Law "B" and "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 20, 1979 as revised

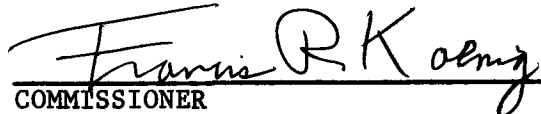
in accordance with the Notice of Assessment Review; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 21 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 440 976 786

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Eleanor Leonard</i>	
Street and No. <i>12 Garden St.</i>	
P.O., State and ZIP Code <i>Great Neck, NY 11020</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

P 440 976 787

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Leon A. Kweit</i>	
Street and No. <i>150 Broadhollow Rd</i>	
P.O., State and ZIP Code <i>Gilwell, NY 11747</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