

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Herbert Stecker	:	
	:	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	:	
Periods Ending 11/30/78 & 5/31/79.	:	

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 31st day of July, 1984, he served the within notice of Decision by certified mail upon Herbert Stecker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Herbert Stecker
43 Leonard Lane
Centereach, NY 11720

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
31st day of July, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

July 31, 1984

Herbert Stecker
43 Leonard Lane
Centereach, NY 11720

Dear Mr. Stecker:

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
Rudolph H. Cartier
Rogers and Cartier, P.C.
180 East Main St.
Patchogue, NY 11772
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HERBERT STECKER	:	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 Periods Ending	:	
November 30, 1978 and May 31, 1979.	:	

Petitioner, Herbert Stecker, 43 Leonard Lane, Centereach, New York 11772, 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 periods ending November 30, 1978 and May 31, 1979 (File No. 43321).

On November 29, 1983, petitioner waived his right to a hearing and submitted his case for decision by the State Tax Commission based on the record as it exists. After due consideration of the record, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner, Herbert Stecker, was a responsible officer of Herbert Stecker, Inc. and, therefore, personally liable for sales taxes allegedly due from said corporation.

FINDINGS OF FACT

1. On December 20, 1982, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued by the Audit Division to petitioner, Herbert Stecker, as an officer personally liable under sections 1131(1) and 1133 of the Tax Law for the sales taxes of Herbert Stecker, Inc. The notice covered the periods ending November 30, 1978 and May 31, 1979 and assessed

taxes due of \$15,825.76, plus penalty and interest of \$2,383.81, for a total of \$18,209.57. The taxes assessed were estimated due to the fact that the Audit Division did not receive sales tax returns for said periods from Herbert Stecker, Inc.

2. On April 22, 1977, petitioner and his wife, Mildred Stecker, as holders of the Capital Shares of Stock of Herbert Stecker, Inc. d/b/a Quality Exxon, executed an agreement to sell all their shares of stock in Herbert Stecker, Inc. to their son, Richard Stecker.

3. At the time of the aforementioned agreement, petitioner and his wife surrendered all their stock and rights as officers and directors of Herbert Stecker, Inc. Other than the payments which were due them on the balance of the purchase price of the business, petitioner and his wife received no monies from Herbert Stecker, Inc. and did not take part in management of the business.

4. Richard Stecker operated the corporation from April 22, 1977 until late spring or early summer of 1978, when the business was closed and he moved to Florida.

5. It was the Audit Division's position that, based on a letter which it received on December 18, 1978, petitioner was a responsible officer of Herbert Stecker, Inc. for the periods at issue. The letter, dated December 15, 1978, provided, in pertinent part, the following:

"This situation causing the enclosed notice has to do with my failure to sign my check and its subsequent return to me."

The letter had the name "Herbert Stecker" typed in the closing, but it was not signed.

6. The aforementioned letter was submitted as a protest to penalty imposed for the late filing of the corporation's sales tax return for the

period ending February 28, 1978, a period when Richard Stecker operated the business. Richard Stecker continued to use the same corporate name, Herbert Stecker, Inc., after his parents relinquished control of the corporation.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides, in part, that every person required to collect the taxes imposed under the Tax Law is also personally liable for the tax imposed, collected, or required to be collected under such law. Section 1131(1) of the Tax Law defines "[p]ersons required to collect tax" as used in section 1133(a) to include any officer or employee of a corporation, or a dissolved corporation, who as such officer or employee is under a duty to act for the corporation in complying with any requirement of Article 28 of the Tax Law.

B. That 20 NYCRR 526.11(b)(2) describes an officer or employee under a duty to act, as a person who is authorized to sign a corporation's tax returns or who is responsible for maintaining the corporate books, or who is responsible for the corporation's management. Other "[i]ndicia of this duty...include factors...such as the officer's day-to-day responsibilities and involvement with the financial affairs and management of the corporation" and "the officer's duties and functions..." (Vogel v. New York State Department of Taxation and Finance, 98 Misc.2d 222, 225).

C. That inasmuch as petitioner sold his business prior to the period at issue and did not take part in management of the business from said time, petitioner was not a person required to collect tax pursuant to sections 1131(1) and 1133(a) of the Tax Law.

D. That the petition of Herbert Stecker is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1982 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984

Richard W. Cline
PRESIDENT

Francis R. Kohnig
COMMISSIONER

Mark J. Smith
COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Rudolph H. Cartier	
Street and No.	
180 East Main St	
P.O., State and ZIP Code	
Patchogue, NY 11772	
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

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Herbert Stecker	
Street and No.	
43 Leonard Ave	
P.O., State and ZIP Code	
Centereach, NY 11720	
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