

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Steinway Press, Inc. :
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 12/1/75 - 8/31/80. :

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 1st day of June, 1984, he served the within notice of Decision by certified mail upon Steinway Press, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steinway Press, Inc.
111 8th Ave.
New York, NY 10011

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
1st day of June, 1984.

David Parchuck

James A. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition
of
Steinway Press, Inc.

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 12/1/75 - 8/31/80.

State of New York }
County of Albany } ss.:

Steven L. Solomon
Hutton & Solomon
342 Madison Ave.
New York, NY 10173

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.

David Paruch

Bruce A. Haynes
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 1, 1984

Steinway Press, Inc.
111 8th Ave.
New York, NY 10011

Gentlemen:

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
Steven L. Solomon
Hutton & Solomon
342 Madison Ave.
New York, NY 10173
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
STEINWAY PRESS, INC.	:	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, 1975	:	
through August 31, 1980.	:	

Petitioner, Steinway Press, Inc., 111 8th Avenue, New York, New York 10011, 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, 1975 through August 31, 1980 (File No. 34524).

A formal hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 19, 1983 at 1:00 P.M., with all briefs to be submitted by September 29, 1983. Petitioner appeared by Stephen L. Solomon, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anna D. Colello, Esq., of counsel).

ISSUES

I. Whether the Notice of Formal Hearing, as issued by the Tax Appeals Bureau, conforms to section 601.9(a)(4) of the State Tax Commission's Rules of Practice and Procedure.

II. Whether the petitioner's purchases of plates and equipment are exempt from sales and use tax as purchases for resale.

III. Whether the additional taxes determined to be due were based on actual figures from the petitioner's books and records or based on the use of a test period.

FINDINGS OF FACT

1. On May 11, 1981, the Audit Division, as the result of a field audit, issued to petitioner, Steinway Press, Inc., two notices of determination and demand for payment of sales and use taxes due (Nos. S810511117C and S810511118C).

The first notice (No. S810511117C) was for taxes due of \$41,403.65, plus interest of \$12,220.83, a total of \$53,624.48 for the period December 1, 1975 through May 31, 1979.

The second notice (No. S810511118C) was for taxes due of \$16,638.73, plus interest of \$1,558.78, a total of \$18,197.51 for the period June 1, 1979 through August 31, 1980.

2. The petitioner executed consents extending the statute of limitations for assessing additional sales and use taxes for the period March 1, 1975 through February 28, 1978.

3. On audit, the examiner for the Audit Division reconciled sales per Federal returns, the general ledger and sales tax reported. Sales tax payable per general ledger and sales tax paid were also reconciled. The examiner tested non-taxable sales for the month of September, 1979. The petitioner was able to substantiate each sale as non-taxable with a resale certificate or out-of-state documentation.

An examination of expense purchases showed that all taxes were paid at the source except with respect to purchases of plates and equipment. The examiner determined that purchases of plates and equipment were fully taxable at the New York City 4% tax rate on machinery or equipment for use of consumption directly and predominantly in production. Plates and equipment purchases were enumerated and listed monthly. The examiner totalled the actual purchases of said items as listed in petitioner's general ledger. The amount of said items

purchased for the taxable periods of the audit amounted to \$1,451,060.00 which resulted in a use tax due of \$58,042.38.

4. At the time of the audit, the petitioner contended that only items listed as "plates" on the purchase invoices should be subject to the 4% use tax. The petitioner indicated that all other items on the purchase invoices should be exempt from the use tax.

On April 16, 1982, the petitioner filed a Perfected Petition wherein in item (12) it listed the following error of the Audit Division which petitioner stated that it intended to prove: "That all purchases were either used in production or processing, or as materials acquired for resale."

On May 18, 1982, the Department of Taxation and Finance filed an answer to the perfected petition wherein, in part, it alleged: "that the property purchased that was subjected to tax was machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property which is not exempt from the local sales tax imposed in the City of New York."

5. On June 13, 1983, a Notice of Formal Hearing was sent to petitioner and petitioner's representative. The notice stated, inter alia, the time and place of the hearing and that the hearing was with respect to the petition of Steinway Press, Inc. 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, 1975 through August 31, 1980.

6. At the hearing, the petitioner's representative presented no arguments or evidence to support petitioner's claim that the plates and equipment "were either used in production or processing, or as materials acquired for resale". The petitioner's representative contended that the Notice of Formal Hearing

failed to state "a short and plain statement of matters asserted", as required by section 601.9 of the State Tax Commission's Rules of Practice and Procedure, and that therefore the Tax Commission lacked jurisdiction to hold a hearing in this matter.

The petitioner's representative also requested a continuance in order to determine, by testimony of the examiner for the Audit Division, whether the audit was based on an actual review of petitioner's books and records or was based on a projection of a test period. This request was denied by the hearing officer.¹

CONCLUSIONS OF LAW

A. That section 601.9 of the State Tax Commission's Rules of Practice and Procedure provide that the notice of hearing shall include:

- "(1) the time, place and nature of the hearing;
- (2) the legal authority and jurisdiction;
- (3) reference to statutory provisions involved, where possible;
- (4) a short and plain statement of matters asserted."

The Notice of Formal Hearing issued to the petitioner on June 13, 1983 substantially conforms to section 601.9, supra, in all respects. Furthermore, the perfected petition and the Department's answer thereto both of which were filed prior to the hearing herein, indicated that the petitioner was aware of the issues involved.

B. That section 1132(c) of the Tax Law, in part, places the burden of proof on the petitioner to show that any receipt is not subject to tax. The

¹ It is noted that petitioner's representative could have issued a subpoena to the examiner (20 NYCRR 601.11(c)).

petitioner has failed to sustain the burden of proof required to show that the plates and equipment were exempt from tax as purchases for resale.

C. That pursuant to Finding of Fact "3", the additional taxes due were based on an actual examination of petitioner's books and records and not based on a test period.

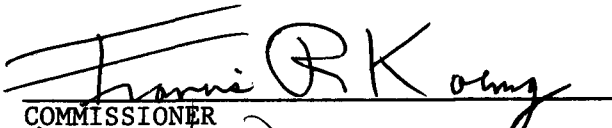
D. That the petition of Steinway Press, Inc. is denied and the notices of determination and demand for payment of sales and use taxes due issued May 11, 1981 are sustained.

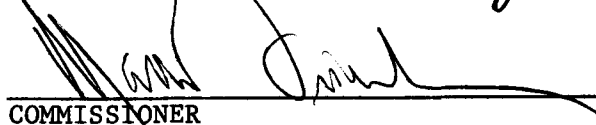
DATED: Albany, New York

STATE TAX COMMISSION

JUN 01 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 440 977 130

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Steven L. Solomon</i>	
Street and No. <i>542 Madison Ave.</i>	
P.O., State and ZIP Code <i>NY, NY 10173</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	

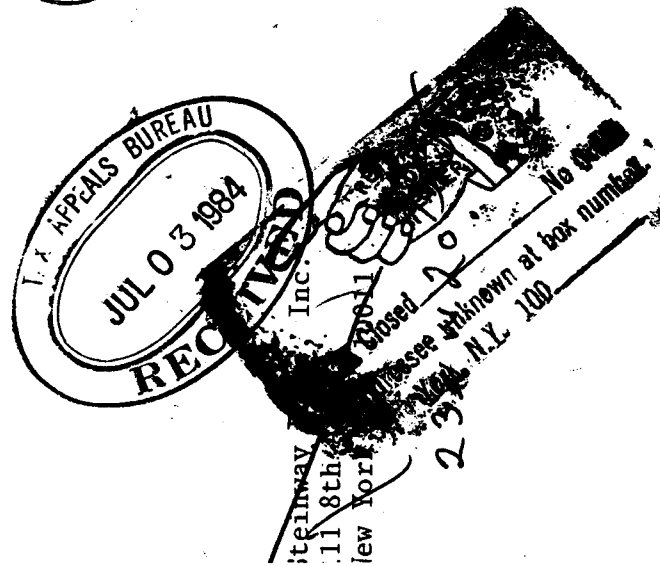
PS Form 3800, Feb. 1982



JUN 26 1984

UNCLAIMED!

JUN 26 1984



P 440 977 129

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Steinway Press, Inc.</i>	
Street and No. <i>111 8th Ave.</i>	
P.O., State and ZIP Code <i>NY, NY 10011</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

CLAIM CHECK NO.

333416

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Postage from PS Form 3848-A Oct 1980

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CERTIFIED
P 440 977 129
MAIL

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

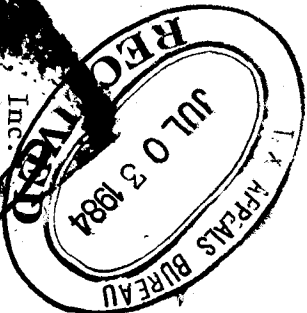
CERTIFIED
P 440 97 129
MAIL

CALCULATION

333416

DATE

Steinway
118th
New York



UNCLASSIFIED

JUN 23 1984

UNCLASSIFIED

JUN 23 1984

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

June 1, 1984

Steinway Press, Inc.
111 8th Ave.
New York, NY 10011

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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
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New York, NY 10173
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STATE OF NEW YORK

STATE TAX COMMISSION

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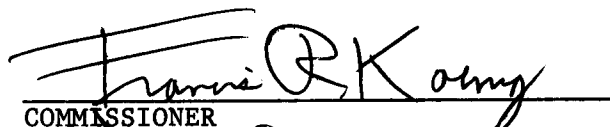
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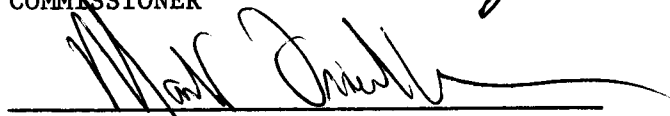
DATED: Albany, New York

STATE TAX COMMISSION

JUN 01 1984


PRESIDENT


COMMISSIONER


COMMISSIONER