

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Alan Weber
Officer of QF Center, Inc. :

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 6/1/78 - 10/30/79.

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 14th day of December, 1984, he served the within notice of Decision by certified mail upon Alan Weber, Officer of QF Center, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan Weber
Officer of QF Center, Inc.
148 Caesar Blvd.
Williamsville, NY 14221

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
14th day of December, 1984.

David Parchuck

James R. Haggan
Authorized to administer oaths
pursuant to Tax Law section 174

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

December 14, 1984

Alan Weber
Officer of QF Center, Inc.
148 Caesar Blvd.
Williamsville, NY 14221

Dear Mr. Weber:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALAN WEBER	:	DECISION
Officer of QF CENTER, 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 June 1, 1978	:	
through October 30, 1979.	:	

Petitioner, Alan Weber, Officer of QF Center, Inc., 148 Caesar Boulevard, Williamsville, New York 14221, 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, 1978 through October 30, 1979 (File No. 38997).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 27, 1984 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether petitioner, Alan Weber, was a person required to collect tax on behalf of QF Center, Inc. and was thus personally liable for sales tax unpaid by said corporation.

FINDINGS OF FACT

1. In June 1977, petitioner, Alan Weber, invested \$15,000.00 in QF Center, Inc. (QF) which was engaged in the photofinishing business. For such investment petitioner was named president and was also issued 50 percent of the outstanding stock.

James Martin was vice-president and owned the remaining 50 percent of the stock.

2. Petitioner was a director of the corporation and had responsibility for the day-to-day management and financial affairs of the corporation. He signed checks and tax returns.

3. On December 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, as officer of QF, covering the period June 1, 1978 through November 30, 1979 for taxes due of \$5,393.76, plus penalty and interest of \$3,255.65, for a total of \$8,649.41. QF filed sales tax returns for the above periods without remitting the taxes due shown thereon. Petitioner was aware that the taxes were not paid over with the returns.

4. Petitioner resigned from the office of president effective September 1, 1979. He continued his activities with QF, however, for thirty days thereafter in order to have an orderly transition of control to James Martin.

5. Petitioner argued that when the corporation ceased doing business, the value of the assets was sufficient to pay the sales tax liability and at that time such assets were under the control of James Martin.

CONCLUSIONS OF LAW

A. That section 1131(1) of the Tax Law provides:

"'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services... Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."

B. That the resolution of whether petitioner, Alan Weber, is a person required to collect tax turns upon a factual determination (Vogel v. Dept.

of Taxation and Finance, 913 Misc.2d 222; Chevlowe v. Koerner, 95 Misc.2d 388).

Relevant factors in such a determination include, but are not limited to, the following: the person's day-to-day responsibilities in the corporation; his involvement in and knowledge of the financial affairs of the corporation and his authority to sign checks; and the identity of the person who prepared and signed tax returns.

C. That petitioner was a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law for the period June 1, 1978 through September 30, 1979 and therefore has personal liability for the unpaid sales taxes due from QF Center, Inc. in accordance with section 1133(a) of the Tax Law.


D. That petitioner bears no personal liability for sales taxes asserted for periods after September 30, 1979, the date he severed his relationship with QF Center, Inc.

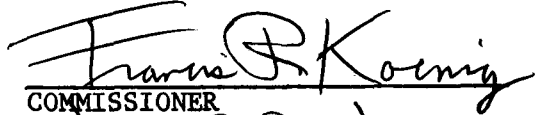
E. That the petition of Alan Weber is granted to the extent indicated in Conclusion of Law "D"; the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1981; and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 14 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

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

CLAIM CHECK
688841

DATE 12-17-84
2106

1ST NOTICE
12-24

2ND NOTICE
1-2

RETURN

Delivered from
PS Form 3848-A
Oct. 1980

Alan Weber
Officer of QF Center, Inc.
148 Caesar Blvd.
Williamsville, NY 14221

REASON CHECKED
No such office in NY
Insufficient address
No such office in NY
Do not mail in NY

DEC 14 1984
N Y

112
697906

RECEIVED
JAN 07 1985
TAX APPEALS BUREAU

CERTIFIED
P 470 316 297
MAIL

P 470 316 297
RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Alan Weber</i>	
Street and No. <i>148 Caesar Blvd</i>	
City, State and Zip Code <i>Williamsville NY 14221</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	

TA 26 (9-79)

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

688841

DWOLD

DATE

12-17-84

1ST NOTICE

2ND NOTICE

RETURN

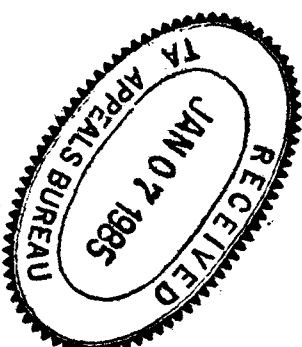
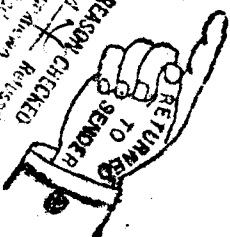
CERTIFIED

P 470 316 2

MAIL

Alan Weber
Officer of QF Center, Inc.
148 Caesar Blvd.
Williamsville, NY 14221

REASON CHECKED
Unclaimed ☒ Addressed ☒ Insufficient Address ☒ No such office ☒ No such street ☒ No mail ☒ Other ☐



REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 1/8/85
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition
Name <i>Alan Weber</i>	
Address <i>Officer at 24 Center, Inc. 148 Caesar Blvd. Williamsville, N.Y. 14221</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>Unclaimed</i>

Searched by <i>DP</i>	Section	Date of Search 1/8/85
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

December 14, 1984

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Building #9, State Campus
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STATE TAX COMMISSION

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STATE OF NEW YORK

STATE TAX COMMISSION

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DATED: Albany, New York

STATE TAX COMMISSION

DEC 14 1984


PRESIDENT


COMMISSIONER


COMMISSIONER