

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

Ida Amore  
d/b/a Something Special : 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 9/22/80.

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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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Ida Amore, d/b/a Something Special the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ida Amore  
d/b/a Something Special  
604 Forest Ave.  
Staten Island, NY 10310

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  
3rd day of October, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Ida Amore :  
d/b/a Something Special :

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 9/22/80.

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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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Michael M. Walsh, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael M. Walsh  
Russo, Fusco, Scano, Scamardella & Frederick  
1010 Forest Ave.  
Staten Island, NY 10310

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  
3rd day of October, 1985.

David Parchuck

Annunzio P. DeGennaro  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

October 3, 1985

Ida Amore  
d/b/a Something Special  
604 Forest Ave.  
Staten Island, NY 10310

Dear Ms. Amore:

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  
Michael M. Walsh  
Russo, Fusco, Scano, Scamardella & Frederick  
1010 Forest Ave.  
Staten Island, NY 10310  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
IDA AMORE	:	DECISION
D/B/A SOMETHING SPECIAL	:	
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 September 22,	:	
1980.	:	

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Petitioner, Ida Amore, d/b/a Something Special, 604 Forest Avenue, Staten Island, New York 10310, 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 ending September 22, 1980 (File No. 42595).

A formal hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 10, 1985 at 9:00 A.M., with all briefs to be submitted by June 10, 1985. Petitioner appeared by Russo, Fusco, Scano, Scamardella & Frederick, P.C. (Michael M. Walsh, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether the sale of a lease constituted a bulk sale pursuant to section 1141(c) of the Tax Law, thus subjecting the buyer to liability for sales taxes due to the State from the seller.

#### FINDINGS OF FACT

1. Denim & Things, Inc. operated a retail men's clothing store at 604 Forest Avenue, Staten Island, New York until September, 1980.

2. On September 22, 1980, Ida Amore, d/b/a Something Special, purchased from Denim & Things, Inc. the right to assume the lease of the premises previously occupied by the latter. The sales price was \$3,600.00.

3. A Notification of Sale, Transfer or Assignment in Bulk, dated January 5, 1982, was received by the Audit Division on January 11, 1982, indicating a sale of the subject lease and goodwill for a total sales price of \$3,600.00. It appears that the notice had been prepared by a tax compliance agent.

4. On April 9, 1982, the Audit Division issued to Ida Amore, d/b/a Something Special, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$3,600.00 for the period ending September 22, 1980. The Notice asserted the petitioner's liability as a purchaser for taxes determined to be due the State from Denim & Things, Inc. In accordance with section 1141(c) of the Tax Law, the purchaser's liability was limited to the purchase price of the leasehold.

5. The only asset purchased by petitioner from Denim & Things, Inc. was the subject lease.

6. Petitioner's son testified that a portion of the purchase price had been placed in an escrow account, and this money was released to the seller upon an order of the Civil Court of The City of New York, Richmond County. The details of that law suit were not offered into evidence.

#### CONCLUSIONS OF LAW

A. That a leasehold is a business asset and its sale constitutes a bulk sale within the meaning and intent of section 1141(c) of the Tax Law.

B. That petitioner failed to give to the State Tax Commission timely and proper notice of the sale and is therefore liable for taxes determined to be due from the seller not to exceed the purchase price of the assets sold.


C. That the petition of Ida Amore d/b/a Something Special is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 9, 1982 is sustained.

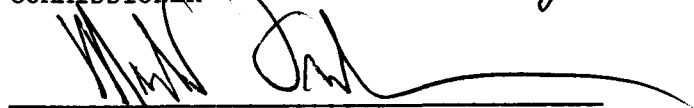
DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

REQUEST FOR BETTER ADDRESS

Request Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request  10/23/85
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Jan - Dec - 10/3/85
Name Ida Amore	
Address d/b/a Something Special 604 Forest Ave. Staten Island, N.Y. 10310	

## Results of search by Files

<input type="checkbox"/> New address:	no found RP 84-83-82 pp 10/25/80
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	memor not forwardable

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

P 153 387 552

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to	<i>Michael M. Wabel</i>
Street and No.	<i>1010 Forest Ave</i>
P.O., State and ZIP Code	<i>Staten Island NY 10310</i>
Postage	<i>\$10.31</i>
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	



*MOVED  
VCP  
NO RESS  
ADD*



Ida Amore  
d/b/a Something Special  
604 Forest Ave.  
Staten Island, NY 10310

*R1E 13*

**CERTIFIED**  
P 153 387 551  
**MAIL**

P 153 387 551

# RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
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(See Reverse)

U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to	<i>Ida Amore</i>
Street and No.	<i>604 Forest Ave</i>
P.O., State and ZIP Code	<i>Staten Island NY 10310</i>
Postage	<i>\$10.31</i>
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

CLAIM CHECK NO.

128609

☐ HOLD

DATE

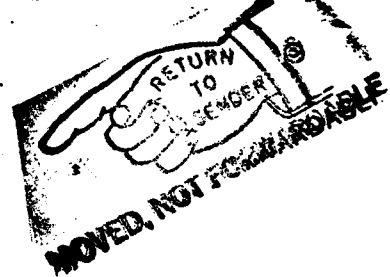
*10-1*

1ST NOTICE

2ND NOTICE

RETURN

Detached from  
PS Form 3849-A  
Oct. 1980





TA 26 (9-79)

STATE OF NEW YORK

State Tax Commission

**TAX APPEALS BUREAU**

STATE CAMPUS

ALBANY, N. Y. 12227

CLAIM CHECK  
NO.

**128609**

*Ida 9*  
*Tim 107*

☐ MOLD

DATE

*10-11*  
~~RECEIVED~~  
~~RECEIVED~~  
~~RECEIVED~~  
~~RECEIVED~~

**MOVED, NOT FOR MAIL ROOM**  
RETURN TO  
MAIL ROOM

**CERTIFIED**

P 153 367 551

**MAIL**

Ida Amore  
d/b/a Something Special  
604 Forest Ave.  
Staten Island, NY 10310

*R-16*  
*13*

**REC IVED**  
**OCT 22 1985**  
**TAX APPEALS BUREAU**

*MOVED*  
*VER 7*  
*Nº 255*  
*ADD*

10

11

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

October 3, 1985

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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  
Michael M. Walsh  
Russo, Fusco, Scano, Scamardella & Frederick  
1010 Forest Ave.  
Staten Island, NY 10310  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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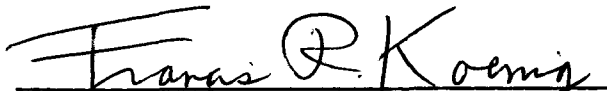
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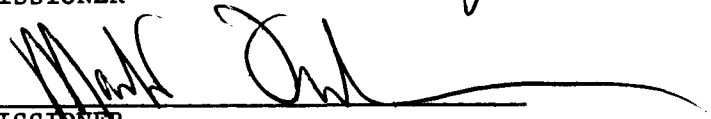
DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985

  
PRESIDENT

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

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D/B/A SOMETHING SPECIAL  
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DECISION

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B. That petitioner failed to give to the State Tax Commission timely and proper notice of the sale and is therefore liable for taxes determined to be due from the seller not to exceed the purchase price of the assets sold.



C. That the petition of Ida Amore d/b/a Something Special is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 9, 1982 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985

Rodriguez Allen  
PRESIDENT

Francis D. Krump  
COMMISSIONER

Mark J. [Signature]  
COMMISSIONER