

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Boychuck's 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
Periods Ending 11/30/80 and 2/28/81.

:

:

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 28th day of June, 1985, he served the within notice of decision by certified mail upon Boychuck's Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Boychuck's Inc.
701 Addison Road
ATTN: Ben Vetter, President
Painted Post, NY 14870

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
28th day of June, 1985.

David Parchuck

James A. Vetter

Authorized to administer oaths
pursuant to Tax Law section 174

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

June 28, 1985

Boychuck's Inc.
701 Addison Road
ATTN: Ben Vetter, President
Painted Post, NY 14870

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BOYCHUCK'S 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 Periods Ending	:	
November 30, 1980 and February 28, 1981	:	

Petitioner, Boychuck's Inc., 701 Addison Road, Painted Post, New York 14870 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, 1980 and February 28, 1981, (File No. 35852).

A Small Claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on December 19, 1984 at 10:45 A.M. Petitioner appeared by its President, Ben Vetter. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq. of counsel).

ISSUE

Whether reasonable cause exists for the abatement of the penalty asserted against petitioner for failure to file part-quarterly returns for the periods ending November 30, 1980 and February 28, 1981.

FINDINGS OF FACT

1. Petitioner, Boychuck's Inc., timely filed New York State and Local Sales and Use Tax Returns (ST-100) for the quarterly periods ending May 31, 1980, August 30, 1980, November 30, 1980 and February 28, 1981. Petitioner reported taxable sales in excess of \$300,000.00 on each of said returns.

2. The Audit Division issued notices and demands for payment of sales and use taxes due against petitioner for the periods ending November 30, 1980 and February 28, 1981. Said notices asserted penalties of \$773.55 and \$1,040.07, respectively, for failure to file part-quarterly returns for those periods as required by section 1136(a) of the Tax Law.

3. Petitioner made two separate requests to the Department of Taxation and Finance that the foregoing penalties be abated. The Processing Division issued notices of assessment review on September 15, 1981 and November 23, 1981 both of which sustained the penalties assessed.

4. On December 9, 1981, petitioner filed a petition seeking a revision of the determination that penalties were properly assessed.

5. Petitioner was formed in August, 1977 and was primarily engaged in the sale of gasoline, diesel fuel and fuel oil. Petitioner also sold beer, cigarettes and grocery items. In March 1980, petitioner purchased a retail gasoline service station business. With the sales from the new business, petitioner's sales exceeded \$300,000.00 for the period ending May 31, 1980 and all subsequent periods.

6. Petitioner argued that it was unaware of the requirement to file monthly part-quarterly returns when taxable sales exceeded \$300,000.00. Petitioner argued further that it filed quarterly returns for the periods ending May 31, 1980 and August 31, 1980 which reported taxable sales in excess of \$300,000.00 and was not notified by the State that such returns were filed erroneously. Petitioner took the position that the State had that responsibility and since it did not give notification, the penalties should be abated.

7. petitioner timely filed sales tax returns for all periods preceding March 1, 1980 and paid the sales taxes due shown thereon. Petitioner commenced filing monthly part-quarterly returns once it was aware of such requirement. The failure to file part-quarterly returns for the periods at issue herein was not due to willful neglect.

8. New York State and Local Sales and Use Tax Returns (ST-100) state in bold type print:

"IF THE AMOUNT REPORTED IN BOXES B & C ABOVE TOTALS \$300,000 OR MORE, YOU ARE REQUIRED TO FILE RETURNS MONTHLY. CONTACT THE SALES TAX PROCESSING UNIT OR LOCAL DISTRICT TAX OFFICE IMMEDIATELY FOR FURTHER INFORMATION."

CONCLUSIONS OF LAW

A. That section 1136(a) of the Tax Law provides, in part, that every person required to register with the Tax Commission whose taxable receipts total three hundred thousand dollars or more in any quarter shall, in addition to filing a quarterly return, file a part-quarterly monthly return with the Tax Commission.

B. That section 1145(a)(1)(i) of the Tax Law provides for the imposition of penalty and interest for failure to file a return or pay over any tax when due. Subdivision (ii) of said section provides for the remission of penalty and that portion of interest that exceeds the minimum statutory rate if the Tax Commission determines that the failure or delay was due to reasonable cause and not due to willful neglect.

C. That 20 NYCRR 536.1(b) sets forth the grounds for reasonable cause. The first five specifically enumerated grounds are inapplicable in this case. The sixth ground is as follows:

"(6) any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Ignorance of the law,

however, will not be considered reasonable cause" (emphasis added).


D. That although petitioner's failure to file timely part-quarterly returns was not due to gross negligence or willful intent, it was due to ignorance of the law. Accordingly, no grounds for reasonable cause have been shown.

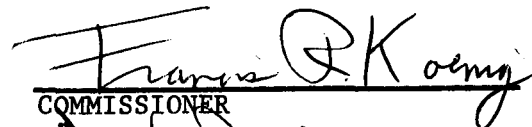
E. That the petition of Boychuck's Inc. is denied and the notices and demands for payment of sales and use taxes due are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 28 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 169 935

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sender	
Boychuck's Inc.	
Street and No.	
701 Addison Rd.	
P.O. State and ZIP Code	
Danville Va	
Postage	Postage Paid NY
Certified Fee	1.4870
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	