

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Jerry Garafolo :  
Officer of Triple J Service Station, 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 12/1/79-12/31/81. :

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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 7th day of November, 1985, he served the within notice of Decision by certified mail upon Jerry Garafolo, Officer of Triple J Service Station, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerry Garafolo  
Officer of Triple J Service Station, Inc.  
15 Adams Dr.  
Stony Point, NY 10980

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  
7th day of November, 1985.

David Parchuck

Connie A. Haglund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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Jerry Garafolo	:	
Officer of Triple J Service Station, Inc.	:	AFFIDAVIT OF MAILING
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Period 12/1/79-12/31/81.	:	

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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 7th day of November, 1985, he served the within notice of Decision by certified mail upon B. Preskin, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

B. Preskin  
117 Riverdale Station  
Riverdale, NY 10471

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  
7th day of November, 1985.

David Parchuck

James A. Hagedorn  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

November 7, 1985

Jerry Garafolo  
Officer of Triple J Service Station, Inc.  
15 Adams Dr.  
Stony Point, NY 10980

Dear Mr. Garafolo:

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  
B. Preskin  
117 Riverdale Station  
Riverdale, NY 10471  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JERRY GAROFOLO : DECISION  
OFFICER OF TRIPLE J. SERVICE STATION, 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, 1979 :  
through December 31, 1981. :  
:

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Petitioner, Jerry Garofolo, Officer of Triple J. Service Station, Inc., 15 Adams Drive, Stony Point, New York 10980, 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, 1979 through December 31, 1981 (File No. 46098).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 6, 1985 at 9:15 A.M. Petitioner appeared by Bernard Preskin, CPA. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect and pay over sales taxes on behalf of Triple J. Service Station, Inc. within the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law during the periods at issue herein.

FINDINGS OF FACT

1. On March 20, 1983, the Audit Division issued to petitioner, Jerry Garofolo, a Notice of Determination and Demand for Payment of Sales and Use

Taxes Due assessing tax due for the period December 1, 1979 through December 31, 1981 in the amount of \$73,535.03, plus penalty and interest. This assessment was premised upon the assertion that petitioner was a person responsible to collect and remit sales and use taxes on behalf of Triple J. Service Station, Inc., ("Triple J") during the noted time period.

2. Triple J, a Power Test Service Station, was owned prior to February 15, 1979 by petitioner, who was then Triple J's only officer and shareholder.

3. On February 15, 1979, Triple J was sold by petitioner to one Fred Costello, who then became Triple J's president and only officer and shareholder. However, petitioner remained associated with Triple J subsequent to the sale as an employee, managing its entire day-to-day operations as before the sale, including handling receipts and bank deposits, paying bills and signing checks.

4. Sales and use tax returns (Forms ST-100) were filed during the period in question on behalf of Triple J bearing petitioner's signature and the title "president".

5. It is petitioner's assertion that since he was no longer an officer of Triple J after February 15, 1979, he is absolved of liability for taxes due for periods subsequent thereto. Petitioner did not appear or give testimony at the hearing.

#### CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law places personal liability for the taxes imposed, collected or required to be collected under Articles 28 upon "every person required to collect any tax" imposed by said article. Section 1131, subdivision (1) furnishes the following definition for the term "persons required to collect tax":

"'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; every recipient of amusement charges; and every operator of a hotel. 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 partnership." (Emphasis supplied).

B. That resolution of the issue of personal liability for sales tax due turns upon a factual determination in each case (Vogel v. Dep't. of Taxation and Finance, 98 Misc.2d 222; Chevlowe v. Koerner, 95 Misc.2d 388). Relevant factors in making such determination include, inter alia, day to day responsibilities in the corporation, involvement in and knowledge of the corporation's financial affairs and its management, the identity of who prepared and signed tax returns and the authority to sign checks [Vogel, supra; see also 20 NYCRR 526.11(b)]. It is noted, in contrast to petitioner's assertion, that the fact that one is not an officer of a corporation does not absolutely absolve that individual of responsibility.

C. That in view of his authority and responsibility, as exercised in carrying on Triple J's ongoing operations, petitioner was a person under a duty to collect, truthfully account for and pay over sales and use taxes within the meaning and intent of Tax Law sections 1131(1) and 1133(a) for the period at issue.

D. That the petition of Gerry Garofolo, officer of Triple J Service Station, Inc. is hereby denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated March 20, 1983 is sustained.

DATED: Albany, New York

NOV 07 1985

STATE TAX COMMISSION

Roderick W. Allen  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

[Signature]  
COMMISSIONER

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# 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>B. Brooks</i>	
Street and No. <i>117 Kinsdale Station</i>	
P.O., State and ZIP Code <i>Post Office NY 10471</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	

P 153 387 662

# 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>Ferry Parafels Office</i>	
Street and No. <i>Triple J Schrie Station Dr</i>	
P.O., State and ZIP Code <i>15 Adams Rd.</i>	
Postage	<i>Money Point NY 10980</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	