

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Hair and Nails, 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 3/1/79-8/31/82. :  
\_\_\_\_\_:

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

Hair and Nails, Inc.  
1655 E. 14 Street  
Brooklyn, NY 11229

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

Chanie A. Haglund  
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 :  
Hair and Nails, 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 3/1/79-8/31/82. :  
:

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

Harry Lewis  
299 Broadway  
New York, NY 10007

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.

Daniel Parchuck

Constance M. Hughes  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

November 7, 1985

Hair and Nails, Inc.  
1655 E. 14 Street  
Brooklyn, NY 11229

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  
Harry Lewis  
299 Broadway  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HAIR AND NAILS, 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 March 1, 1979	:	
through August 31, 1982.	:	

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Petitioner, Hair and Nails, Inc., 1655 East 14th Street, Brooklyn, New York 11229, 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 March 1, 1979 through August 31, 1982 (File No. 41777).

A 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 26, 1985 at 9:50 A.M. Petitioner appeared by Harry Lewis, Esq. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined additional sales taxes due from Retlaw Novelties, Inc., a bulk sale seller.

II. If so, whether the Audit Division is required to take action against the aforesaid bulk sale seller prior to seeking to obtain sales taxes due from petitioner, the bulk sale purchaser.

FINDINGS OF FACT

1. On November 18, 1982, the Audit division issued to petitioner, Hair and Nails, Inc., a Notice of Determination and Demand for Payment of Sales and

Use Taxes for taxes of \$5,830.80, plus penalty of \$1,142.70 and interest of \$1,274.77, for a total amount due of \$8,248.27 for the period March 1, 1979 through August 31, 1982. The notice contained the following explanation:

"The following taxes are determined to be due from Retlaw Novelties, Inc. and represents your liability, as purchaser, in accordance with Section 1141(c) (sic) of the Sales Tax Law."

2. On January 18, 1983, the petitioner timely filed a petition for a hearing to review the notice of determination. It is the position of petitioner that the Audit Division incorrectly determined the additional taxes due from Retlaw Novelties, Inc. ("Retlaw") and, further, that the Audit Division is required to attempt to collect the taxes allegedly due from Retlaw, the bulk sale seller, before seeking to collect said taxes from the petitioner, the bulk sale purchaser.

3. It is the position of the Audit Division that the taxes due from Retlaw were based on the type and location of the business and are therefore correct and that they are not required to collect against a bulk sale seller prior to seeking to collect from a bulk sale purchaser.

4. Retlaw, a New York corporation, owned and operated a beauty salon known as "14 East Hair Designers" and "14 East Unisex" located at 1401 Kings Highway, Brooklyn, New York. On June 28, 1982, Retlaw and Martin Schaffer entered into an agreement with Larisa Tselnik for the sale of the business to Ms. Tselnik. Ms. Tselnik subsequently formed petitioner, Hair and Nails, Inc. and assigned her rights in the contract of sale to petitioner. On July 16, 1982, petitioner purchased the business for \$15,000.00 of which \$1,500.00 was allocable to furniture and fixtures.

5. On August 27, 1982, the petitioner sent a Notification of Sale, Transfer of Assignment in Bulk to the Audit Division. On August 30, 1982, the

Audit Division sent to the petitioner a Notice of Claim to Purchaser, and a Notice to Escrow Agent to Martin Schaffer.

6. On September 13, 1982, the Audit Division sent a Notice to the Seller wherein it requested Retlaw to submit specific information in order that the Audit Division could determine Retlaw's sales tax liability. When Retlaw failed to respond to the Audit Division's request for information, the Audit Division issued the notice of determination against the petitioner. The taxes due were subsequently reduced to \$5,631.84 as petitioner filed a sales tax return for the period July 16 through August 31, 1982 showing a tax due of \$198.96.

7. At the hearing, the Audit Division offered no evidence of the basis for issuing the notice of determination or the method used to compute the additional taxes determined to be due.

#### CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in pertinent part, as follows:

"(a)(1) If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the tax commission from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors."

B. That the record does not show a basis for issuing the notice of determination or explain the external index used in computing the tax due; therefore, the notice of determination is hereby cancelled.

C. That, in view of Conclusion of Law "B", Issue II is moot.

D. That the petition of Hair and Nails, Inc. is granted.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985

*Raduichawlu*  
PRESIDENT

*Francis P. Koenig*  
COMMISSIONER

*Mark J. ...*  
COMMISSIONER

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU

CLAIM CHECK NO. 972126  
JUS 2227

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from  
PS Form 3849-A  
Oct. 1980

REASON CHECKED  
Unclaimed  
Addressee unknown  
Insufficient address  
No such office in state  
Do not renew before envelope

DELIVERED TO  
SENDER

3000  
UNK  
Hair and Nails, Inc.  
1655 E. 14 Street  
Brooklyn, NY 11229

**CERTIFIED**  
P 153 387 658  
**MAIL**

RECEIVED  
NOV 7 9 1985  
AU

UNK



P 153 387 659  
**RECEIPT FOR CERTIFIED MAIL**  
NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

PS Form 3800, Feb. 1982  
★ U.S.G.P.O. 1984-446-014

Sent to	<i>Harry Lewis</i>
Street and No.	<i>297 Broadway</i>
P.O. State and ZIP Code	<i>New York, NY 10007</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 153 387 658

**RECEIPT FOR CERTIFIED MAIL**  
NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

★ U.S.G.P.O. 1984-446-014

3800, Feb. 1982

Sent to	<i>Hair &amp; Nails Inc</i>
Street and No.	<i>1655 E 14 St</i>
P.O. State and ZIP Code	<i>Brooklyn NY 11229</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

ALBANY

972-2227

**CERTIFIED**

P 153 387 658

**MAIL**

Hair and Nails, Inc.  
1655 E. 14 Street  
Brooklyn, NY 11229



Unclassified  
and returned to  
post office  
RECEIVED TO POST OFFICE  
NOV 19 1983  
Prescription not valid  
No state license in state  
Do not return to sender  
JULIAN

UNK

3002



TA-36 (9/76)

State of New York - Department of Taxation and Finance  
Tax Appeals BureauREQUEST 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  11/20/85
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec. 11/7/85
Name Hair and Nails, Inc.	
Address 1655 E. 14 Street Brooklyn, N. Y. 11229	

## Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	Address Unknown

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

November 7, 1985

Hair and Nails, Inc.  
1655 E. 14 Street  
Brooklyn, NY 11229

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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  
Harry Lewis  
299 Broadway  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
HAIR AND NAILS, INC. : DECISION  
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D. That the petition of Hair and Nails, Inc. is granted.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985

*Rodolph A. Allen*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. [unclear]*  
COMMISSIONER