

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Hilton Pianos, Inc.	:	
Robert Hilton	:	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 12/1/77-11/30/80.	:	

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State of New York :

ss.:

County of Albany :


Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Hilton Pianos, Inc., Robert Hilton, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hilton Pianos, Inc.  
Robert Hilton  
Latham Circle Mall  
Latham, NY 12110

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  
13th day of December, 1985.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

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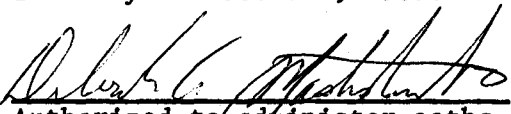
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Edward P. Ryan, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

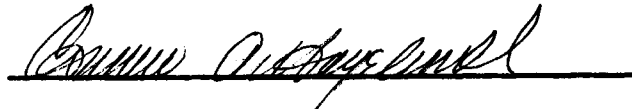
Edward P. Ryan  
4 Pine St.  
Albany, NY 12205

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  
13th day of December, 1985.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

December 13, 1985

Hilton Pianos, Inc.  
Robert Hilton  
Latham Circle Mall  
Latham, NY 12110

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  
Edward P. Ryan  
4 Pine St.  
Albany, NY 12205  
Taxing Bureau's Representative

## STATE TAX COMMISSION

## DECISION

1. On March 20, 1981, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Hilton Pianos, Inc., in the amount of \$19,324.25, plus penalty of \$4,264.52 and interest of \$4,101.41, for a total due of \$27,690.18 for the period December 1, 1977 through November 30, 1980.

2. At a conference held prior to the hearing, the Audit Division reduced the tax due to \$15,485.60, plus penalty and interest, as a result of additional documentation submitted by petitioner.

3. Petitioner is engaged in the retail sale of pianos, organs, sheet music and various musical accessories. During the period in issue, it operated stores in Albany, Utica, Glens Falls, Saratoga, Rensselaer and Rotterdam. All of petitioner's store managers and sales personnel were paid on a straight commission basis.

4. Each time a sales transaction occurred at petitioner's stores, a sales invoice was prepared regardless of whether full payment was made or only a deposit tendered. The sales invoices were forwarded to the central office where the office manager filed them. If a sale involving a deposit was never consummated, the deposit was returned to the customer and another copy of the invoice was marked void or cancelled and forwarded to the central office. Petitioner's accounting system was somewhat erratic at the time and sometimes the duplicate invoice would be associated with the original and sometimes it would be filed separately.

5. Each salesperson maintained his or her own commission sheet which listed monthly consummated sales. Only consummated sales were counted toward commission calculations. Deposits on sales were not counted until the full purchase price was tendered or a check was received from the finance company on financed transactions. If sales were not reported, no commission was earned, therefore, the sales personnel had an incentive to accurately report consummated sales on the commission sheets. However, once the commission sheets were turned in to the central office, neither the store managers nor the sales

personnel had anything to do with preparation of books and records or tax returns.

6. The office manager at the central office posted all consummated sales to a combination cash receipts/sales journal. It is unclear whether the office manager used the invoices, the commission sheets, bank deposits or some other source to obtain the sales figures which she posted to the journal. The office manager prepared sales tax returns from the journal.

7. In August, 1979, all of petitioner's records were moved to a warehouse and left in an extremely disordered state. Upon commencing the audit, the auditor found the sales invoices scattered in no particular order in boxes in the warehouse office. No journals or ledgers were available and, other than the invoices, the only document provided was a Federal tax return. Two of petitioner's employees were able to put the sales invoices into a workable order and the auditor totalled the sales from these invoices, applied the appropriate sales tax rates and compared the result to sales tax reported in order to arrive at additional tax due.

8. Petitioner argued that use of the invoices was not an accurate indicator of its sales tax liability because there were duplicate invoices and invoices representing unconsummated sales. Petitioner did not, however, produce any other documents, either during the audit, at a pre-hearing conference or at the hearing, which would provide a more accurate indication of its sales. The monthly commission sheets and cash receipts/sales journal were never given to the auditor or placed in evidence at the hearing.

9. Some of petitioner's employees attempted to organize the invoices in order to identify unconsummated sales, but it was virtually impossible, given the condition of the invoices, to determine which sales were consummated and

which were deposits only. It should be noted that in 1975 an independent certified public accountant reviewed petitioner's accounting procedures and described petitioner's handling of sales and deposits as "sloppy bookkeeping" and "inexcusable." Petitioner did not change its accounting system until after the audit period.

10. In reviewing the invoices, petitioner's employees found several invoices which appeared to have been deposits only. They made phone calls to the customers named on the suspect invoices to verify whether a consummated sale occurred. Of the invoices checked, five were found to have been cancelled sales. The five sales totalled \$9,500.00 itemized as follows:

<u>Sales Price</u>	<u>Tax Assessed</u>
\$2,195.00	\$131.70
695.00	48.65
935.00	65.45
4,200.00	168.00
1,475.00	59.00
<u>\$9,500.00</u>	<u>\$472.80</u>

CONCLUSIONS OF LAW

A. That a "...vendor is obligated to maintain records of his sales for audit purposes (Tax Law, §1135), and the State, when conducting an audit, must determine the amount of tax due 'from such information as may be available,' but 'if necessary, the tax may be estimated on the basis of external indices' (Tax Law, §1138, subd. [a])." Korba v. New York State Tax Commission, 84 A.D.2d 655. Exactness in determining the amount of sales tax liability is not required where it is the petitioner's own failure to maintain proper records which necessitates the use of external indices. Markowitz v. State Tax Commission, 54 A.D.2d 1023 aff'd 44 N.Y.2d 684.

B. That petitioner's basic source documents, the invoices, were admittedly in such a chaotic state that it was virtually impossible to determine which invoices

represented consummated sales and which represented deposits. None of the other records supposedly maintained by petitioner which would have verified sales were ever provided and, therefore, the auditor was left with no alternative but to determine the tax due using the invoices.

C. That petitioner was able to show through its own investigation, as discussed in Finding of Fact "10", that five of the sales upon which tax was assessed were cancelled and, therefore, the assessment is to be reduced by the \$472.80 in tax due on such sales.

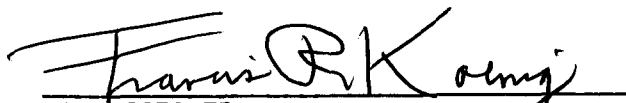
D. That the petition of Hilton Pianos, Inc. is granted to the extent indicated in Finding of Fact "2" and Conclusion of Law "C"; that the Audit Division is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 20, 1981 accordingly; and that, except as so granted, the petition is in all other respects denied.

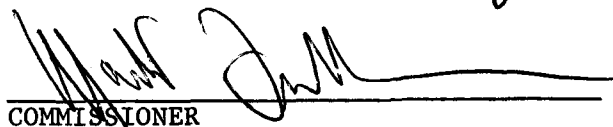
DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



P 684 313 043

**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

Sent to <i>Stetson Linnas Inc.</i>	
Street and No. <i>Rob Litten</i>	
P.O., State and ZIP Code <i>Albany, New York</i>	
Postage <i>Delton NY 12210</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	

P 684 313 044

**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

Sent to <i>Edward P Ryan</i>	
Street and No. <i>7 Pine St</i>	
P.O., State and ZIP Code <i>Albany NY 12205</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	