

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Edward J. Lynch

:

: 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 12/1/77-8/31/79.

:

:

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon Edward J. Lynch, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward J. Lynch
30-13 42nd St.
Astoria, NY 11103

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
15th day of February, 1985.

David Parchuck

David A. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Edward J. Lynch :

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 12/1/77-8/31/79.

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 15th day of February, 1985, he served the within notice of Decision by certified mail upon James A. Fuery, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James A. Fuery
37-55 76th St.
Jackson Heights, NY 11372

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
15th day of February, 1985.

David Parchuck

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

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

February 15, 1985

Edward J. Lynch
30-13 42nd St.
Astoria, NY 11103

Dear Mr. Lynch:

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
James A. Fuery
37-55 76th St.
Jackson Heights, NY 11372
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EDWARD J. LYNCH : 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 December 1, 1977 :
through August 31, 1979.

Petitioner, Edward J. Lynch, 30-13 42nd Street, Astoria, New York, 11103, 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, 1977 through August 31, 1979 (File No. 49291).

A formal 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 October 2, 1984 at 2:45 P.M. Petitioner appeared by James A. Fuery, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether a petition for a hearing was timely filed.

FINDINGS OF FACT

1. On September 7, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, numbered S820907402Q, against petitioner, Edward J. Lynch, assessing a tax due of \$3,320.40 plus penalty and interest for the period December 1, 1977 through August 31, 1979.
2. By letter of November 1, 1983, the Tax Appeals Bureau notified petitioner that his September 1, 1983 protest letter was late, having been filed beyond 90 days from the date of the Notice of Determination and Demand for

Payment of Sales and Use Taxes Due. The Tax Appeals Bureau's letter actually referred to the date of mailing of the September 1 letter which was September 2, 1983.

3. Petitioner's September 1, 1983 letter was prepared by James A. Fuery, Esq., petitioner's duly appointed representative, and provided, in part:

"I have attached herewith a copy of a letter I sent your office in November of 1982 relative to Edward Lynch, identification number 112352505 in response to a Notice #S820907402Q.

We have no further communication respecting Mr. Lynch's appeal.

* * *

Please advise what our situation is relative to the appeal."

4. At the hearing, Mr. Fuery testified that he prepared and mailed an original letter of protest on November 16, 1982 after petitioner consulted with him on that date about the Notice of Determination and Demand for Payment of Sales and Use Taxes Due. The duplicate copy of the letter introduced into evidence and the follow-up letter of September 1, 1983 were addressed as follows:

"New York State Tax Commission
Tax Appeals Bureau
Room 107, Bldg. 9
State Campus
Albany, New York 12227"

5. The Tax Appeals Bureau has no record of receipt of the letter dated November 16, 1982.

CONCLUSIONS OF LAW

A. That pursuant to section 1138(a)(1) of the Tax Law a notice of determination of tax due "(s)hall be given to the person liable for the collection or payment of the tax. Such determination shall finally and irrevocably fix

the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the tax commission for a hearing...".

B. That petitioner, Edward J. Lynch, first petitioned for a hearing on or about September 1, 1983. This Commission has no record of receipt of an earlier petition and petitioner failed to prove that such a petition was in fact mailed. The petition received, dated September 1, 1983, was filed outside the 90 day time limitation prescribed by section 1138(a)(1).

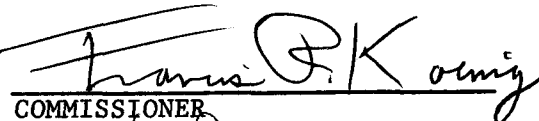
C. That the petition of Edward J. Lynch is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 7, 1982 is sustained.

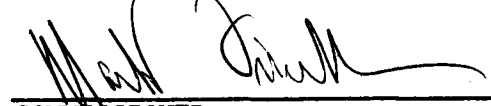
DATED: Albany, New York

STATE TAX COMMISSION

FEB 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 169 571

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>James A. Flury</i>	
Street and No. <i>31-55 76th St</i>	
P.O., State and ZIP Code <i>Jackson Heights NY 11372</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 693 169 570

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 J. Lynch</i>	
Street and No. <i>30-13 48th St</i>	
P.O., State and ZIP Code <i>Queens NY 11103</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	