

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Francis J. Maguire :  
Officer of M & B Block Co. : 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 6/1/79-5/31/82. :

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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 23rd day of May, 1985, he served the within notice of decision by certified mail upon Francis J. Maguire, Officer of M & B Block Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Francis J. Maguire  
Officer of M & B Block Co.  
Green Acres Road  
Hudson, NY 12534

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  
23rd day of May, 1985.

David Parchuck

David P. Hegelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

January 2, 1985

Francis J. Maguire  
Officer of M & B Block Co.  
Green Acres Road  
Hudson, NY 12534

Dear Mr. Maguire:

Please take notice of the of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 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 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

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In the Matter of the Petition	:	
of	:	
FRANCIS J. MAGUIRE	:	DECISION
Officer of M & B BLOCK CO., 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 June 1, 1979	:	
through May 30, 1982.	:	

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Petitioner, Francis J. Maguire, Officer of M & B Block Co., Inc., Green Acres Road, Hudson, New York 12534, 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 June 1, 1979 through May 30, 1982 (File No. 45257).

A small claims hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York on February 4, 1985 at 9:15 A.M., with all documents to be submitted by February 18, 1985. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect and pay over sales and use taxes on behalf of M & B Block Co., Inc. pursuant to the terms of sections 1131(1) and 1133(a) of the Tax Law.

FINDINGS OF FACT

1. On May 13, 1983, the Audit Division issued to petitioner, Francis J. Maguire, as an officer of M & B Block Co., Inc., a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period June 1, 1979 through May 31, 1982 in the amount of \$9,723.03 plus penalty and interest.

2. M & B Block Co., Inc. ("M & B"), was incorporated in New York State on April 1, 1977, and began doing business in New York State on April 11, 1977. M & B was, until its liquidation resulting from bankruptcy, engaged in the manufacture of concrete products including concrete blocks and mats. The one hundred issued and outstanding shares of M & B stock were held by its officers and directors as follows:

<u>Name</u>	<u>Office</u>	<u># of Shares Held</u>
Francis J. Maguire	President	1
William H. Brownell	Vice-President	1
Constance Ann Maguire	Secretary and Treasurer	98

Each of the above-named individuals was an authorized signatory on M & B's checking account.

3. On or about April 24, 1978, M & B was experiencing financial difficulties and one Robert C. Kellam became associated with M & B by his infusion of \$50,000.00 into the business. Mr. Kellum did not become an officer of M & B. However, he was made an authorized signatory on the checking account, and ownership of M & B's issued and outstanding stock was restructured as follows:

<u>Name of Shareholder</u>	<u># of Shares Held</u>
Francis J. Maguire	1
William H. Brownell	1
Constance Anne Maguire	47
Robert C. Kellam	51

4. On or about January 31, 1979, petitioner's employment with M & B was terminated by Mr. Kellam (M & B's controlling shareholder), and petitioner and Constance Anne Maguire were removed from all participation in the affairs of M & B. After his termination, petitioner never returned to M & B's premises. Petitioner never formally resigned from his corporate office nor did he surrender his one share of M & B stock.

5. M & B's Corporation Franchise Tax Reports (Forms CT-4) for the fiscal years ended March 31, 1980 and March 31, 1981, list petitioner on the Schedule of Officers and Stockholders (Schedule D) as president, but indicate his total compensation as "none", with Mr. Kellam and Mr. Brownell as the only officers or shareholders receiving any compensation.

6. Wage and Tax Statements (Forms W-2) issued to petitioner by M & B for the years 1978 and 1979 reflect his total compensation for 1978 as \$15,600.00 and for 1979 as \$1,500.00. Schedules K-1, also attached to the Franchise Tax Reports for the noted fiscal years, indicate petitioner's compensation as "none" and the percentage of time he devoted to the business as "none".

7. On April 6, 1982, M & B filed a petition to liquidate in the U.S. Bankruptcy Court for the Northern District of New York. Petitioner was not involved in the bankruptcy proceedings.

#### 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 Article 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 a partnership."

B. That the documentary evidence submitted, as well as the credible testimony offered in support thereof, establish the fact that petitioner's


entire relationship with M & B had been (non-voluntarily) terminated as of January 31, 1979, which date is prior to the period in question. Accordingly, petitioner was not a person under a duty to collect and pay taxes on behalf of M & B during the period at issue.

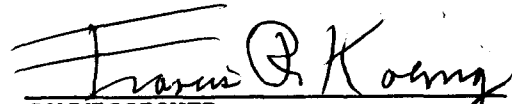
C. That the petition of Francis J. Maguire is hereby granted and the Notice of Determination dated May 13, 1983 is cancelled.

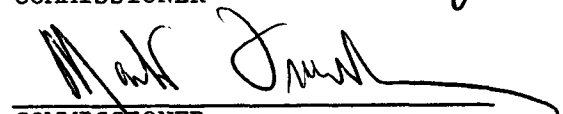
DATED: Albany, New York

STATE TAX COMMISSION

**MAY 23 1985**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 693 169 885

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

\* U.S. P.O. 4983-403-517

PS Form 3800, Feb. 1982

Sent to	<i>James J. McGuire</i>
Street and No.	<i>Box of M.B. Black Co</i>
P.O., State and ZIP Code	<i>West Chester, Pa.</i>
Postage	<i>12534</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	