

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
L. E. Paschall :
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 Years :
1976 - 1980. :

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 L. E. Paschall, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

L. E. Paschall
14 Jefferson Street
Copiague, NY 11727

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

Annmarie Carbone
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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of :
L. E. Paschall :
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for Redetermination of a Deficiency or Revision :
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under Article 28 & 29 of the Tax Law for the :
Years 1976 - 1980. :
:

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 William A. Whitman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William A. Whitman
Siben & Siben
90 East Main Street
Bay Shore, NY 11706

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

Annmarie A. Chagnon
Authorized to administer oaths

pursuant to Tax Law section 174

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

November 7, 1985

L. E. Paschall
14 Jefferson Street
Copiague, NY 11727

Dear Mr. Paschall:

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
William A. Whitman
Siben & Siben
90 East Main Street
Bay Shore, NY 11706
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
L. E. PASCHALL	:	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 Years 1976 through 1980.	:	

Petitioner, L. E. Paschall, 14 Jefferson Street, Copiague, New York 11727, 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 years 1976 through 1980 (File No. 40527).

A hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 6, 1985 at 10:45 A.M. Petitioner appeared by Siben & Siben, Esqs. (William A. Whitman, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether payments made by a third party on petitioner's outstanding sales tax liability were properly credited to petitioner's account.

FINDINGS OF FACT

1. Petitioner, L. E. Paschall, had originally owned a delicatessen business. On an unspecified date in the mid-1970's, petitioner sold this business to Mr. and Mrs. Edward Lawrence, Jr. As part of the sales agreement, Mr. and Mrs. Lawrence agreed to pay to the Department of Taxation and Finance petitioner's outstanding sales tax liability. From February, 1976 through December, 1980, Mr. and Mrs. Lawrence sent checks, usually in the amount of

\$206.80, to the Department. The checks were generally marked either "payment for L. E. Paschall" or with assessment number 90,778,023P.

2. On April 13, 1981, the Audit Division issued a refund to petitioner of \$599.23 plus interest. On July 20, 1981, the Audit Division issued a second refund to petitioner in the amount of \$138.49 plus interest. The refunds were based on a determination that petitioner had five sales tax assessments outstanding totalling \$8,637.10, less payments from petitioner of \$276.23, for an outstanding balance of \$8,360.87. Credit was given for payments from Mr. and Mrs. Lawrence totalling \$9,098.59 resulting in an overpayment of \$737.72, which amount constituted the aforesaid refunds.

3. At the hearing, petitioner produced 55 cancelled checks drawn by Mr. and Mrs. Lawrence to the order of the Department. Fifty-four of the checks were drawn in the amount of \$206.80 and one was drawn in the amount of \$203.80 for a total of \$11,371.00. The Audit Division would not give full credit for the 55 checks because the deposit numbers, stamped by the Division, were not legible on some of the checks. The Audit Division's position is that some of these checks may have been applied to old assessments other than the five assessments mentioned supra. A check of the Department's records revealed no other sales tax assessments against petitioner other than those five. Petitioner maintains that he is entitled to an additional refund giving him credit for the total payments made on his behalf by Mr. and Mrs. Lawrence.

CONCLUSIONS OF LAW

A. That the checks produced by petitioner indicate that \$11,371.00 was paid on petitioner's behalf by Mr. and Mrs. Lawrence. The Audit Division had records of five assessments originally outstanding against petitioner totalling \$8,637.10. There is no indication in any Department records of any additional

sales tax assessments. Petitioner is thus entitled to a refund determined as follows:


Total assessments	\$ 8,637.10
Less amount received from petitioner	<u>- 276.23</u>
Total outstanding	\$ 8,360.87
 Total received from Mr. and Mrs. Lawrence	 \$11,371.00
Less total outstanding	<u>- 8,360.87</u>
Overpayment	\$ 3,010.13
Less prior refunds	<u>737.72</u>
Additional refund	<u>\$ 2,272.41</u>

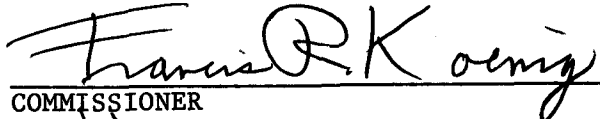
B. That the petition of L. E. Paschall is granted to the extent that the Audit Division is directed to refund the sum of \$2,272.41, together with such interest as may be lawfully owing; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


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	S. E. Paschall	
	Street and No.	14 Jefferson St	
	P.O., State and ZIP Code	Cape May NJ 08204	
	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			

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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	William A. Whitman	
	Street and No.	100 E. Main St	
	P.O., State and ZIP Code	New York NY 10006	
	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			