

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arco Mini Mart, : AFFIDAVIT OF MAILING
Edson E. & Gertrude Evans :
:
for Redetermination of a Deficiency or Revision
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law for the
Period 9/1/79-5/31/81. :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 3rd day of July, 1986, he/she served the within notice of Decision by certified mail upon Arco Mini Mart, Edson E. & Gertrude Evans the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arco Mini Mart
Edson E. & Gertrude Evans
4328 Harlem Rd.
Snyder, NY 14226

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
3rd day of July, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arco Mini Mart, : AFFIDAVIT OF MAILING
Edson E. & Gertrude Evans :
:
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law for the :
Period 9/1/79-5/31/81. :

State of New York :
ss.:
County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 3rd day of July, 1986, he served the within notice of Decision by certified mail upon Neil Weinberg, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Neil Weinberg
305 Brisbane Bldg.
Buffalo, NY 14203

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
3rd day of July, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 3, 1986

Arco Mini Mart
Edson E. & Gertrude Evans
4328 Harlem Rd.
Snyder, NY 14226

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Neil Weinberg
305 Brisbane Bldg.
Buffalo, NY 14203

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

ARCO MINI MART,
EDSON E. and GERTRUDE EVANS :

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 September 1, 1979
through May 31, 1981.

Petitioners, Arco Mini Mart, Edson E. and Gertrude Evans, 4328 Harlem Road, Snyder, New York 14226, 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 September 1, 1979 through May 31, 1981 (File No. 42264).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York on February 28, 1986 at 9:15 A.M. Petitioners appeared by Neil Weinberg, Esq. The Audit Division appeared by John P. Dugan, Esq., (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether petitioner Gertrude Evans was an owner or partner of Arco Mini Mart and therefore liable for sales tax assessed.

FINDINGS OF FACT

1. On October 21, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against "Edson E. and Gertrude (sic) Evans d/b/a Arco Mini Mart" for total additional tax due of \$68,606.44 and penalty of \$16,887.89, plus interest. The period for which the assessment was issued was September 1, 1979 through May 31, 1981. The explanation for the

assessment was "(s)ince you have not submitted your records for audit as required by Section 1142 of the Tax Law, the following taxes are determined to be due in accordance with the Tax Law, and are based upon available records and information."

2. The assessment was based on third party verification of gasoline sales furnished by Atlantic Richfield. Petitioners do not contest the amount of the assessment, or the liability of Edson E. Evans. It was stipulated at the hearing that the only issue remaining was the liability of Gertrude Evans.

3. Petitioners Edson E. Evans and Gertrude Evans filed a certificate of conducting business as partners in the Office of the Erie County Clerk on August 7, 1978. The name of the business was Evans Arco Mini Mart. The business sold gasoline, groceries and other items.

4. The business was registered with the Sales Tax Bureau of the Department of Taxation and Finance. The validation by the Sales Tax Bureau is dated June 7, 1978. Edson E. Evans and Gertrude Evans were listed on the certificate as the owners of the business. Only Mr. Evans' social security number is shown on the registration form.

5. On November 3, 1978, Edson E. Evans and Gertrude Evans executed and acknowledged a Certificate of Discontinuance of Business as partners under the name of Evans Arco Mini Mart and on the same date Edson E. Evans filed a certificate of conducting business under an assumed name as an individual in the Erie County Clerk's Office.

6. The lease for the business premises at 2977 Niagara Falls Boulevard in Amherst, New York, was in the name of Edson E. Evans. Gertrude Evans was not named on the lease.

7. During the period at issue, petitioner Edson E. Evans was a school teacher. He worked in the store after school, in the evenings and on weekends. Gertrude Evans worked in the store from approximately 9:00 A.M. to 2:00 P.M. daily, when she would return home to care for their three school age children.

8. Petitioner Edson E. Evans managed the business on a day-to-day basis. He hired and fired employees, dealt with Atlantic Richfield representatives and did most of the ordering for the business.

9. The federal Schedule 'C' attached to petitioners' 1980 Federal Income Tax Return shows the proprietor of the business to be "Edson Evans".

CONCLUSIONS OF LAW

A. That under section 1133(a) of the Tax Law, every person required to collect sales or use tax is personally liable for the tax imposed, collected, or required to be collected.

B. That section 1131(1) of the Tax Law provides as follows:

"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 partnership."

C. That petitioner Gertrude Evans is not a "vendor" as such term is defined in section 1101(b)(8) of the Tax Law. Thus, she would be liable for the tax assessed only if she were a member of a partnership against which tax was assessed.


D. That petitioner Gertrude Evans ceased to be a partner of Evans Arco Mini Mart on November 3, 1978. She was not a partner during the audit period and thus is not liable for the taxes assessed.

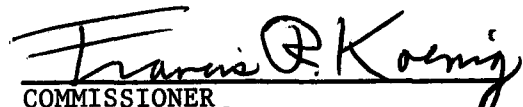
E. That the petition of Arco Mini Mart, Edson E. and Gertrud Evans, is granted to the extent that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is cancelled insofar as it applies to petitioner Gertrud Evans. The Notice of Determination and Demand for Payment of Sales and Use Taxes Due is sustained insofar as it applies to petitioner Edson E. Evans.

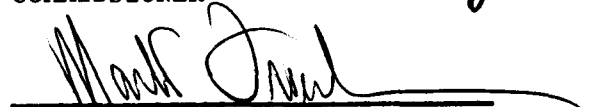
DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986


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. 1985-480-794

PS Form 3800, June 1985

Sent to Angie Nina Matt Edson E + Gertrude Evans	
Street and No. 4325 Harlem Rd.	
P.O. State and ZIP Code Snyder, N.Y. 14226	
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 319 372 873

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NO INSURANCE COVERAGE PROVIDED
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(See Reverse)

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PS Form 3800, June 1985

Sent to Neil Weinberg	
Street and No. 305 Brisbane Bldg	
P.O. State and ZIP Code Buffalo, N.Y. 14203	
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	