

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles Gingold
President of C & M Fireplace, Inc. : 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 6/1/77 - 2/28/81. :

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 17th day of January, 1986, he served the within notice of Decision by certified mail upon Charles Gingold, President of C & M Fireplace, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles Gingold
President of C & M Fireplace, Inc.
95 Cedar Dr.
W. Plainview, NY 11803

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
17th day of January, 1986.

David Parchuck

Quinn O'Hagan

Authorized to administer oaths
pursuant to Tax Law section 174

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

Janaury 17, 1986

Charles Gingold
President of C & M Fireplace, Inc.
95 Cedar Dr.
W. Plainview, NY 11803

Dear Mr. Gingold:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES GINGOLD, AS PRESIDENT	:	DECISION
OF C & M FIREPLACES, 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, 1977	:	
through February 28, 1981.	:	

Petitioner, Charles Gingold, 95 Cedar Drive, West Plainview, New York 11803, 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 periods June 1, 1977 through February 28, 1981 (File No. 42091).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 7, 1985 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Joseph W. Pinto, Esq., of counsel).

ISSUE

Whether petitioner, as corporate president, is personally liable for both sales and use taxes due from C & M Fireplaces, Inc.

FINDINGS OF FACT

1. C & M Fireplaces, Inc. ("C & M") was a New York corporation organized by petitioner, Charles Gingold, and was engaged in the business of repairing, selling and installing woodburning stoves and fireplaces.

2. An audit of the books and records of C & M disclosed additional sales and use taxes due as follows:

audited taxable sales	\$1,706,954.00 @ 7%	\$119,487.00
materials used in capital improvements		20,643.00
additional taxable sales based on unaccounted		
for purchases	\$59,968.00 @ 7%	4,128.00
expense purchases		363.16
total audited tax due		<u>\$144,621.16</u>
tax paid		<u>112,523.80</u>
additional taxes due		<u>\$ 32,097.36</u>

On December 11, 1981, petitioner, on behalf of C & M, executed a consent to fixing of tax whereby he agreed to the above liability for C & M. At the time petitioner signed the consent, he was aware of the manner in which the taxes were determined and believed the amount to be correct.

Petitioner had previously executed consents extending the period of limitation for assessment of sales and use taxes for the period June 1, 1977 through May 31, 1980 to February 28, 1982.

3. On February 19, 1982, in accordance with the consent to fixing of tax, the Audit Division issued to C & M two Notice and Demand for Payment of Sales and Use Taxes Due documents which, taken together, assessed the total tax liability of \$32,097.36 plus minimum statutory interest for the period June 1, 1977 through February 28, 1981. A Notice and Demand for Sales and Use Taxes Due for the same amount was issued on November 20, 1982 to petitioner, Charles Gingold, asserting his personal liability as an officer of C & M for taxes due from the corporation.

4. Petitioner had signed a prior consent to fixing of tax on December 10, 1980 which covered the period June 1, 1977 through May 31, 1980 and was in the amount of \$28,381.99. This consent, however, was rejected by the Audit Division since the audit period was updated to include the period June 1, 1980 through February 28, 1981.

5. Mr. Gingold contends that as a corporate officer his personal liability is limited to the amount of sales tax which C & M failed to collect or collected

and failed to report, an amount he estimated to be \$10,298.00, and that his personal liability does not extend to use tax due and owing by the corporation. He argued that the consent to fixing taxes which he executed fixed the liability of C & M, not his own personal liability.

6. Mr. Gingold was the sole stockholder, president and manager of C & M. He maintained all of the corporation's books and records and prepared and signed its tax returns.

7. The sum of \$1,380.77 was realized from the forced sale at auction of C & M's entire inventory. The Audit Division conceded that this amount should be applied against the assessment in issue.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides that "every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article" (emphasis added).

B. That petitioner, Charles Gingold, was a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law and, therefore, is personally liable for both the sales and the use taxes due from C & M in accordance with section 1133(a) of the Tax Law (Matter of A-1 Fence Company, Inc., New York State Tax Commission, August 7, 1981).

C. That the \$1,380.77 received by the Tax Department from the sale of inventory of C & M shall be applied against the assessment in issue.

D. That the petition of Charles Gingold is granted to the extent indicated in Conclusion of Law "C"; that the Audit Division is directed to modify the Notice and Demand for Payment of Sales and Use Taxes Due issued November 20,

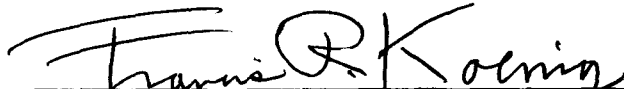
1982; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 684 313 134

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1963-403-517
PS Form 3800, Feb. 1962

Sent to	<i>Charles Ungard, Jr.</i>	
Street and No.	<i>E. M. Ferguson (M)</i>	
P.O., State and ZIP Code	<i>95 Cedar St. W. Plainsboro NY 08533</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		