

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Anson B. Herrick :

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 9/1/78 - 5/31/79. :

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Anson B. Herrick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anson B. Herrick
52A Maple Ave.
Bayshore, 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of January, 1986.

David Parchuck

Connie Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Anson B. Herrick
52A Maple Ave.
Bayshore, NY 11706

Dear Mr. Herrick:

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	:	
ANSON B. HERRICK	:	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, 1978	:	
through May 31, 1979.	:	

Petitioner, Anson B. Herrick, 52A Maple Avenue, Bayshore, New York 11706, 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, 1978 through May 31, 1979 (File No. 44108).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 7, 1985 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Joseph W. Pinto, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly estimated sales tax due from the petitioner.

II. Whether the Audit Division failed to properly credit petitioner for taxes paid.

FINDINGS OF FACT

1. On December 20, 1982, the Audit Division issued to petitioner a Notice of Determination and Demand for Payment of Sales and Use Taxes Due asserting taxes of \$13,361.79, plus penalty of \$3,340.44 and interest of \$6,306.76, for a

total of \$23,008.99 for the period September 1, 1978 through May 31, 1979. The notice included the following explanation:

"You are personally liable as officer of Herrick-Nickerson Marine Sales Inc. under sections 1131(1) and 1133 of the Tax Law for the following taxes determined to be due in accordance with section 1138(a) of the Tax Law."

2. Upon initiating an audit of Herrick-Nickerson Marine Sales, Inc. (the "corporation") in July of 1980, the Audit Division discovered that the corporation had ceased doing business as of August 15, 1979. No sales tax returns had been filed by it for the periods in issue. Consequently, the Audit Division estimated taxes due on the basis of prior returns filed.

3. At a pre-hearing conference, petitioner submitted sales tax returns on behalf of the corporation for the three sales tax quarters in issue showing a sales tax due of \$8,525.65. The Audit Division agreed to accept this amount plus statutory penalty and interest as the total amount due.

4. The petitioner has conceded his personal liability as officer of the corporation. However, he contends that the notice in issue duplicated previous assessments issued against the corporation and satisfied. In support of his contention, petitioner submitted three cancelled checks paid to the order of the State Tax Commission as follows:

<u>Check No.</u>	<u>Amount</u>	<u>Date</u>
1590	\$5,304.69	April 23, 1979
1044	\$5,233.79	January 3, 1980
1114	\$4,955.20	July 11, 1980

5. Before it ceased to do business, a number of tax assessments were issued against the corporation. The three checks shown above were all applied to these assessments. The Department of Taxation and Finance, Accounts Receivable System shows the following:

a) Check number 1590 in the amount of \$5,304.69 was applied to assessment number D7901249150 for the period March 1, 1978 through May 31, 1978, asserting tax plus penalty and interest of \$5,304.69.

b) Check number 1044 in the amount of \$5,233.79 was applied to assessment number D7904080948 for the period June 1, 1978 through August 31, 1978, asserting tax plus penalty and interest of \$5,233.79.

c) Check number 1114 in the amount of \$4,955.20 was applied to assessment number D7912301462 for the period June 1, 1979 through August 31, 1979, asserting tax plus penalty and interest of \$4,955.20. No payments were applied to the periods in issue.

CONCLUSIONS OF LAW

A. That where, as here, a person fails to keep adequate books and records as mandated by section 1135 of the Tax Law, the Audit Division is justified in determining the amount of tax due by estimating on the basis of external indices in accordance with section 1138(a) of the Tax Law.

B. That petitioner was a person required to collect tax as provided by section 1133(a) of the Tax Law and, as such, is personally liable for tax determined to be due from the corporation.

C. That there is absolutely no foundation for petitioner's contention that taxes determined to be due for the period in issue have been partially or completely satisfied.

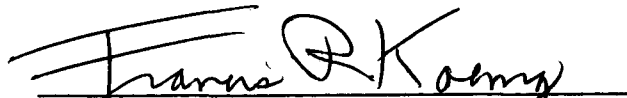
D. That the petition of Anson B. Herrick is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, as modified by the Audit Division (Finding of Fact "3"), is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 684 313 177

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	Anson B. Herrick	
	Street and No.	524 Maple Ave	
	P.O., State and ZIP Code	Bayshore, N.Y. 11706	
	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			