

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Anthony Mareno :

AFFIDAVIT OF MAILING

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 3/1/79 - 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 8th day of May, 1986, he/she served the within notice of Decision by certified mail upon Anthony Mareno the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Mareno  
209 Princeton Avenue  
Staten Island, NY

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  
8th day of May, 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 :  
Anthony Mareno :

AFFIDAVIT OF MAILING

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 3/1/79 - 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 8th day of May, 1986, he served the within notice of Decision by certified mail upon Raymond L. Liebman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raymond L. Liebman  
1698 Victory Blvd.  
Staten Island, NY 10314

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  
8th day of May, 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

May 8, 1986

Anthony Marenio  
209 Princeton Avenue  
Staten Island, NY

Dear Mr. Marenio:

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:  
Raymond L. Liebman  
1698 Victory Blvd.  
Staten Island, NY 10314

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
ANTHONY MARENO : 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 March 1, 1979 :  
through May 31, 1981.

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Petitioner, Anthony Mareno, 209 Princeton Avenue, Staten Island, New York 10306, 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 March 1, 1979 through May 31, 1981 (File No. 54957).

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 December 2, 1985 at 1:15 P.M. Petitioner appeared by Raymond L. Liebman, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner timely applied for a hearing.

FINDINGS OF FACT

1. On June 18, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Anthony Mareno, covering the period March 1, 1979 through May 31, 1981 for taxes due of \$35,266.94, plus fraud penalty of \$17,633.50 and interest of \$8,394.74, for a total of \$61,295.18. Said notice was sent certified mail, however, it was returned undeliverable indicating the addressee had moved and left no forwarding address.

2. On June 21, 1982, the above notice was remailed to petitioner at 209 Princeton Avenue, Staten Island, New York 10306. This notice was also sent certified mail. The postal receipt was returned with the signature of petitioner and showed June 21, 1982 as the date of delivery.

3. The earliest correspondence received by the Audit Division from petitioner which could be construed as a petition for a hearing was a letter dated August 4, 1983.

4. Petitioner denied receipt of the notice dated June 21, 1982. He alleged that he first became aware of the notice after a warrant was filed and a Tax Compliance agent contacted him for payment.

#### CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in pertinent part, that a notice of determination of tax due shall be given to the person liable for the collection or payment of the tax, and such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the Tax Commission for a hearing.

B. That section 1147(a)(1) of the Tax Law provides that a notice of determination shall be mailed promptly by registered or certified mail. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. The mere denial of receipt does not overcome this presumption. Any period of time which is determined according to the provisions of Article 28 by the giving of notice shall commence to run from the date of mailing of such notice.

C. That the Audit Division gave petitioner notice of the additional taxes due on June 21, 1982. Petitioner did not timely file a protest to such notice

or make application for a hearing with respect thereto until August 4, 1983.

Accordingly, petitioner's liability was finally and irrevocably fixed.

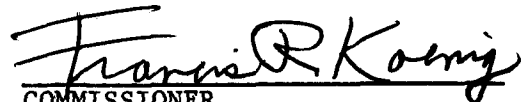
D. That the petition of Anthony Mareno is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 21, 1982 is sustained.

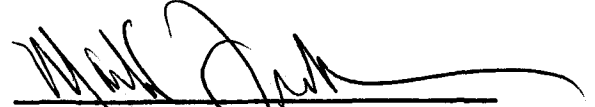
DATED: Albany, New York

STATE TAX COMMISSION

**MAY 08 1986.**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 319 373 695

**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 <b>Anthony Marena</b>	
Street and No. <b>209 Princeton Ave</b>	
P.O., State and ZIP Code <b>Staten Island NY</b>	
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 319 373 696

**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 <b>Raymond L. Liebman</b>	
Street and No. <b>1698 Victory Blvd.</b>	
P.O., State and ZIP Code <b>Staten Island, NY 10314</b>	
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	