

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of

Philip Sturiale : AFFIDAVIT OF MAILING  
As an Officer of An-Phil Service Center, Inc.

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 12/1/80 - 2/28/81.  
\_\_\_\_\_

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 20th day of November, 1986, he/she served the within notice of Decision by certified mail upon Philip Sturiale, As an Officer of An-Phil Service Center, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip Sturiale  
As an Officer of An-Phil Service Center, Inc.  
2566 Gentsen Ave.  
Brooklyn, NY 11229

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  
20th day of November, 1986.

Janet M. Snay

David Parchuck  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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Philip Sturiale : AFFIDAVIT OF MAILING  
As an Officer of An-Phil Service Center, Inc.

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for the Period 12/1/80 - 2/28/81.

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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 20th day of November, 1986, he served the within notice of Decision by certified mail upon Harold B. Bonime, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

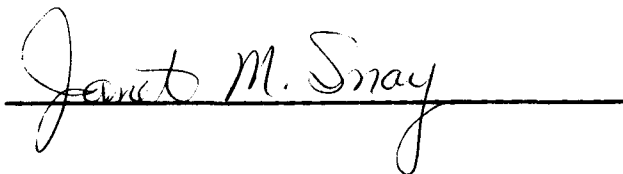
Harold B. Bonime  
170 Broadway - Room 201  
New York, NY 10038

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  
20th day of November, 1986.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

November 20, 1986

Philip Sturiale  
As an Officer of An-Phil Service Center, Inc.  
2566 Gentsen Ave.  
Brooklyn, NY 11229

Dear Mr. Sturiale:

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:  
Harold B. Bonime  
170 Broadway - Room 201  
New York, NY 10038

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
PHILIP STURIALE, : DECISION  
AS AN OFFICER OF AN-PHIL SERVICE CENTER, 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 December 1, 1980 :  
through February 28, 1981. :  

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Petitioner, Philip Sturiale, as an officer of An-Phil Service Center, Inc., 2566 Gentsen Avenue, Brooklyn, New York 11229, 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 December 1, 1980 through February 28, 1981 (File No. 55886).

A hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1986 at 10:45 A.M. Petitioner appeared by Harold B. Bonime, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether a petition to request revision of the assessment herein against Philip Sturiale, as an officer of An-Phil Service Center, Inc., was timely filed.

FINDINGS OF FACT

1. On March 13, 1984, the Audit Division issued to petitioner, Philip Sturiale, as an officer of An-Phil Service Center, Inc., a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period December 1,

1980 through February 28, 1981 in the amount of \$7,001.28, plus penalty and interest.

2. In addition to an explanation that the deficiency was being issued against petitioner, individually, pursuant to Tax Law sections 1131(1) and 1133 as a responsible officer of An-Phil Service Center, Inc., the above notice also stated on its face the following:

"THE TAX ASSESSED HEREIN HAS BEEN ESTIMATED OR DETERMINED TO BE DUE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1138 OF THE TAX LAW AND MAY BE CHALLENGED THROUGH THE APPEALS PROCESS BY FILING A PETITION WITHIN 90 DAYS."

3. A petition to contest the above deficiency was filed. The petition form bears petitioner's signature and the date June 11, 1984. The envelope in which the petition was mailed is addressed to the State Tax Commission, Tax Appeals Bureau, Albany, New York 12227, and bears the United States Postal Service postmark June 13, 1984. This petition was rejected by the Tax Appeals Bureau as not timely filed.

4. The instant deficiency is one among a group of related deficiencies pertaining to other quarterly periods. It is alleged that petitions for each of the other deficiencies, none of which is at issue herein, were mailed by petitioner's representative via certified mail return receipt requested. However, by contrast, the petition herein was mailed by petitioner's representative by ordinary mail. It is alleged that the petition was mailed on June 11, 1984 at a mail box that indicated frequent daily pickups, and that the June 13, 1984 rather than a June 11, 1984 postmark may have been the result of Postal Service error.

#### CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides that if a return when filed is incorrect or insufficient, the amount of tax due shall be determined

from such information as may be available; it further provides that 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 or unless the Tax Commission of its own motion shall redetermine the same. The burden of proof is on petitioner to show that he filed a timely petition, and the Tax Commission has taken a strict position regarding the statutorily-established ninety-day period to petition for a hearing (Matter of Saul's Pharmacy, Inc., State Tax Comm., September 28, 1983; Matter of Micro-Carbureter Corporation, State Tax Comm., June 30, 1986).

B. That Tax Law §1147(a)(2) provides, in pertinent part:

"If any return, claim, statement, notice, application or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date under authority of any provision of this article is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed..., the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. ...If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section." (emphasis supplied.)


C. That the petition herein was not filed within ninety days after the Audit Division gave notice of the taxes due. Accordingly, petitioner's liability was finally and irrevocably fixed.

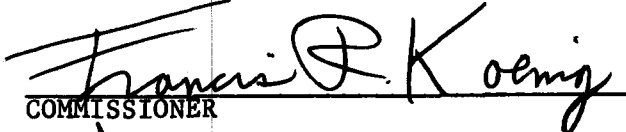
D. That the petition of Philip Sturiale, as an officer of An-Phil Service Center, Inc., is hereby denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated March 13, 1984 is sustained.

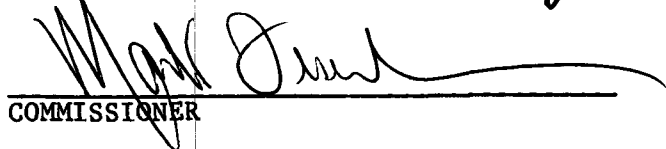
DATED: Albany, New York

STATE TAX COMMISSION

NOV 20 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA-26 (7/85)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
W. A. Harriman Campus  
ALBANY, N.Y. 12227

188690

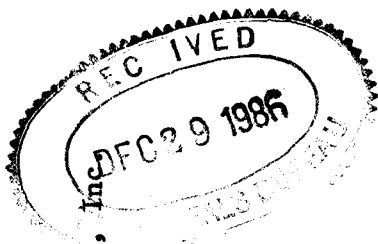


**CERTIFIED**

P 319 376 845

**MAIL**

~~Philip Sturiale  
As an Officer of An-Phil Service Center, Inc.  
2566 Gentsen Ave.  
Brooklyn, NY 11229~~





REQUEST FOR BETTER ADDRESS*ST*

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>1/7/87</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>Dec. 11/20/86</i>
Name <i>Philip Sturiale</i>	
Address <i>as an Officer at An-Phil Service Center, Inc. 7566 Buntzen Ave. Brooklyn, N.Y. 11229</i>	

## Results of search by Files

<input type="checkbox"/> New address:	<i>N/A 1/13/87 nfw</i>
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>Unclaimed</i>

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

November 20, 1986

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2566 Gentsen Ave.  
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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:  
Harold B. Bonime  
170 Broadway - Room 201  
New York, NY 10038

STATE OF NEW YORK

STATE TAX COMMISSION

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PHILIP STURIALE,	:	DECISION
AS AN OFFICER OF AN-PHIL SERVICE CENTER, 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 December 1, 1980	:	
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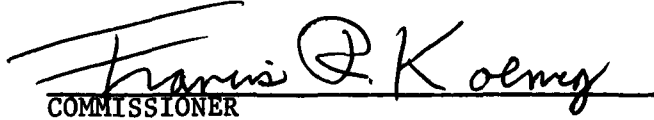
D. That the petition of Philip Sturiale, as an officer of An-Phil Service Center, Inc., is hereby denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated March 13, 1984 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 20 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER