

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Union Port Glass Co., 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, 1978 through :
February 28, 1982. :

In the Matter of the Petition :
of :
Concord Metal Store Front Co., 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, 1978 through :
May 31, 1982. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Union Port Steel Sash Sales, 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, 1978 through :
May 31, 1982. :

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 Union Port Steel Sash Sales, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Union Port Steel Sash Sales, Inc.
1003 Liberty Ave.
Brooklyn, NY 11208

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.

Page 2

Affidavit of Mailing

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.

Darwin Perchuck

James A. Highland

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Union Port Glass Co., 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, 1978 through :
February 28, 1982. :

In the Matter of the Petition :
of :
Concord Metal Store Front Co., Inc. :

for Revision of a Determination or for Refund of :
Sales and Use Taxes under Articles 28 and 29 of :
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May 31, 1982. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Union Port Steel Sash Sales, 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, 1978 through :
May 31, 1982. :

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 served the within notice of Decision by certified mail upon Isaac Sternheim, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Isaac Sternheim
Isaac Sternheim & Co.
5612 18th Ave.
Brooklyn, NY 11204

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.

Page 2

Affidavit of Mailing

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
28th day of January, 1986.

David Parobuck

James P. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Concord Metal Store Front Co., Inc.
1003 Liberty Ave.
Brooklyn, NY 11208

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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Isaac Sternheim
Isaac Sternheim & Co.
5612 18th Ave.
Brooklyn, NY 11204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Union Port Glass Co., 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, 1978 through :
February 28, 1982. :

In the Matter of the Petition :
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Concord Metal Store Front Co., Inc. :

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Union Port Steel Sash Sales, 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, 1978 through :
May 31, 1982. :

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 Concord Metal Store Front Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Concord Metal Store Front Co., Inc.
1003 Liberty Ave.
Brooklyn, NY 11208

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.

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

David Parolush

Annmarie J. Goggin
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Union Port Glass Co., Inc.
1003 Liberty Ave.
Brooklyn, NY 11208

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STATE TAX COMMISSION

cc: Petitioner's Representative
Isaac Sternheim
Isaac Sternheim & Co.
5612 18th Ave.
Brooklyn, NY 11204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Union Port Glass Co., 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, 1978 through :
February 28, 1982. :

In the Matter of the Petition :
of :
Concord Metal Store Front Co., 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, 1978 through :
May 31, 1982. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Union Port Steel Sash Sales, 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, 1978 through :
May 31, 1982. :

State of New York :

ss.:

County of Albany :

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Union Port Glass Co., Inc.
1003 Liberty Ave.
Brooklyn, NY 11208

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.

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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.

Daniel Parshuck

James A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Union Port Steel Sash Sales, Inc.
1003 Liberty Ave.
Brooklyn, NY 11208

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:

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Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Isaac Sternheim
Isaac Sternheim & Co.
5612 18th Ave.
Brooklyn, NY 11204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
UNION PORT GLASS CO., 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, 1978 :
through February 28, 1982.

In the Matter of the Petition :
of :
CONCORD METAL STORE FRONT CO., INC. : 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 June 1, 1978 :
through May 31, 1982.

In the Matter of the Petition :
of :
UNION PORT STEEL SASH SALES, 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, 1978 :
through May 31, 1982.

Petitioners, Union Port Glass Co., Inc., Concord Metal Store Front Co., Inc. and Union Port Steel Sash Sales, Inc. 1003-1017 Liberty Avenue, Brooklyn, New York 11208, filed petitions 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, 1978 through May 31, 1982. (File Nos. 41169, 47610, 41192, 47609, 49109 and 41168).

A consolidated hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 6, 1985 at 10:00 A.M., with all briefs to be submitted by August 8, 1985. Petitioners appeared by Isaac Sternheim, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined that petitioners were liable for additional sales and use taxes for the periods at issue.

II. Whether the notices of determination and demand for payment of sales and use taxes due were jurisdictionally defective since they were issued (mailed) approximately nineteen (19) days prior to the date indicated thereon.

FINDINGS OF FACT

1. During the period at issue, the petitioners herein, Union Port Glass Co., Inc. ("Union Port Glass"), Concord Metal Store Front Co., Inc. ("Concord Metal") and Union Port Steel Sash Sales, Inc. ("Union Port Steel") were contractors. Union Port Glass installed glass and performed glazing services, Concord Metal installed aluminum store fronts and Union Port Steel was engaged in the erection of structural steel. Concord Metal and Union Port Steel were subsidiaries of Union Port Glass. All sales were recorded and invoiced by Union Port Glass and allocated to each company based on the work performed. All jobs were performed by one or any combination of the three companies. Each company maintained a separate set of books and records.

2. a) On December 1, 1982, the Audit Division issued to Union Port Glass two notices of determination and demand for payment of sales and use taxes due. Notice number S821220402K, dated December 20, 1982, assessed additional sales and use taxes of \$80,601.76, plus interest of \$22,383.83, for a total of

\$102,985.59 for the period June 1, 1978 through November 30, 1981. Notice number S821220398K, dated December 20, 1982, assessed additional sales and use taxes of \$4,996.46, plus interest of \$508.19, for a total of \$5,504.65 for the period ended February 28, 1982.

b) On December 1, 1982, the Audit Division issued to Concord Metal a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (No. S821220400K), dated December 20, 1982, assessing additional sales and use taxes of \$54,231.91, plus interest of \$10,654.95, for a total of \$64,886.86 for the period June 1, 1978 through May 31, 1982.

c) On December 1, 1982, the Audit Division issued to Union Port Steel a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (No. S821220401K), dated December 20, 1982, assessing additional sales and use taxes of \$4,197.60, plus interest of \$848.03, for a total of \$5,045.63 for the period June 1, 1978 through May 31, 1982.

3. The assessments were predicated on the conduct of a field audit by the Audit Division which at this point in time had not yet been completed. However, the impending expiration of the period for assessment of additional tax, as described in Finding of Fact "4", below, necessitated the issuance of the notices.

4. a) On July 30 and December 7, 1981 and on May 7 and August 30, 1982 Union Port Glass, by signature of an officer, executed consents extending the period of limitations for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law. The last consent extended the period June 1, 1978 through August 31, 1979 to December 20, 1982.

b) On June 7 and August 30, 1982, Concord Metal, by signature of an officer, executed consents extending the period of limitations for assessment

of sales and use taxes under Articles 28 and 29 of the Tax Law. The last consent extended the period June 1, 1978 through May 31, 1980 to December 20, 1982.

c) On June 7 and August 31, 1982, Union Port Steel, by signature of an officer, executed consents extending the period of limitations for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law. The last consent extended the period June 1, 1978 through May 31, 1980 to December 20, 1982.

5. Each of the petitioners filed a timely petition for a hearing to review the notice or notices indicated in Findings of Fact 2(a), (b) and (c), above.

6. Upon completion of the field audit, the Audit Division made the following adjustments:

(a) On September 20, 1983, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued to Union Port Glass assessing sales and use taxes of \$23,641.32, plus interest of \$6,604.01, for a total of \$30,245.33 for the period June 1, 1980 through February 28, 1982. This Notice was in addition to Notice numbers S821220402K and S821220398K issued December 1, 1982. The Audit Division also found additional sales and use taxes to be due for the period June 1, 1978 through May 31, 1980, however, the statute of limitations had expired for this period.

(b) On January 2, 1984, a Notice of Assessment Review was issued to Union Port Glass reducing Notice number S821220402K from \$80,601.07 to \$79,360.07.

(c) On September 20, 1983 a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued to Concord Metal assessing sales and use taxes of \$34,791.86, plus interest of \$8,227.89, for a total of \$43,019.75 for the period June 1, 1980 through May 31, 1982. This Notice was in addition to Notice number S821220400K issued December 1, 1982. The Audit Division also found additional sales and use taxes to be due for the period June 1, 1978 through May 31, 1980, however, the statute of limitations had expired for this period.

(d) On November 20, 1983 a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued to

Concord Metal Assessing sales and use taxes of \$507.60, plus interest of \$150.16, for a total of \$657.76, for the period ended May 31, 1981. This Notice was in addition to Notice numbers S821220400K and S830920416K.

(e) On January 3, 1984, a Notice of Assessment Review was issued to Union Port Steel reducing Notice number S821220401K from \$4,197.60 to \$466.15.

7. Petitioners Union Port Glass and Concord Metal filed timely petitions for a hearing to review the notices indicated in Findings of Fact 6(a), (c) and (d), above.

8. Pursuant to petitioners' perfected petitions, petitioners' position is that the Audit Division did not follow proper procedures and guidelines in making their determination. Petitioners' further maintain that they did not agree to the test period method of audit and that the auditor should have examined invoices for the entire audit period.

9. (a) The sales tax examiner reviewed the sales tax payable account of Union Port Glass for the audit period and found that this petitioner did not remit sales taxes of \$29,432.80. This amount was assessed.

(b) The examiner next reviewed nontaxable sales for the test period December 1, 1980 through February 28, 1981 and disallowed \$5,449.00 of said sales. This amount represented a percentage of error of .71% which when applied to nontaxable sales reported for the audit period resulted in total disallowed nontaxable sales of \$61,722.00. The examiner reviewed taxable sales for the same test period and found that taxable sales per cash receipts exceeded taxable sales reported by \$5,254.00. Of this amount, \$5,107.00 was due to a posting error and, therefore, was treated as an isolated transaction (not considered in determining a percentage of error). The balance of \$147.00 (\$5,254.00 - \$5,107.00) was applied to total taxable sales reported of \$20,183.00 and resulted in a percentage of error of .72%. This percentage was applied to

taxable sales reported for the audit period of \$292,049.00 to determine an increase in taxable sales of \$2,107.00. Additional taxable sales of \$68,936.00 (\$61,722.00 + \$5,107.00 + \$2,107.00) were added to taxable sales reported of \$249,384.00 to determine audited taxable sales of \$318,320.00 and sales tax due of \$25,798.38. The petitioner reported sales tax of \$20,665.05, resulting in additional sales tax due of \$5,133.33. This amount was assessed. It should be noted that the results of the taxable ratio tests apply to all three petitioners; however, since all sales were reported by petitioner Union Port Glass, the additional taxes were assessed only against said petitioner.

(c) The examiner then reviewed material purchases of Union Port Glass for the period December 1, 1980 through February 28, 1981 and found that tax was not paid on purchases totaling \$104,016.00 and that tax was paid on purchases totaling \$5,256.00. The examiner computed sales for which purchases were tax exempt of \$1,666,654.00 (disallowed nontaxable sales of \$44,249.00, taxable sales increase of \$7,214.00, taxable sales reported of \$179,217.00, and sales to exempt organizations and out-of-state sales of \$1,435,974.00). The petitioner was unable to provide adequate data to determine the cost of materials per job. Therefore, the examiner computed the relationship of material purchases to sales per books. Material costs represented 15.43% of sales. This percentage was applied to the total sales of \$1,666,654.00 for which purchases are tax exempt and resulted in tax exempt purchases of \$255,665.00. Material purchases for the audit period totaled \$1,387,122.00. Material purchases subject to use tax totaled \$1,126,201.00 for the audit period (\$1,387,122.00 - \$255,665.00 + \$5,256.00). Prior to completion of the audit, Notice number S821220402K was issued to petitioner (see Finding of Fact "2(a)") assessing material purchases of \$644,277.00. Due to the expiration of the statute of limitations, the

petitioner, at that point in time, could not be assessed for periods prior to June 1, 1980. Therefore, the petitioner was only assessed for material purchases totaling \$900,138.00 for use taxes due of \$72,358.82.

(d) The examiner reviewed expense purchases for the period December 1, 1980 through February 28, 1981 and found that tax was not paid on \$468.15 of these purchases. This amount was for a specific supplier and a detailed examination was performed for the period June 1, 1978 through May 31, 1981 resulting in expense purchases subject to use tax of \$8,167.94. For the period June 1, 1981 through February 28, 1982 the examiner determined a percentage of error of 18.235% (\$468.15 purchases subject to use tax in test period to \$2,567.36 total purchases for test period). This percentage was applied to purchases for the June 1, 1981 to February 28, 1982 period resulting in expense purchases subject to use tax of \$2,571.27. Expense purchases subject to use tax for the audit period totaled \$10,736.12 with a use tax due thereon of \$863.82. This amount was assessed.

(e) Fixed asset purchases were examined in detail for the audit period. The examiner found that tax was not paid on purchases totaling \$2,613.40 with a tax due thereon of \$209.08. This amount was assessed.

(f) The total amount assessed against Union Port Glass as a result of the above was \$107,997.85.

10. (a) The examiner received material purchases of petitioner Concord Metal for the period December 1, 1980 through February 28, 1981 and found that tax was not paid on material purchases totaling \$77,301.00 and that tax was paid on purchases totaling \$70,956.00. Since adequate data was not made available to determine the cost of material purchases used to perform jobs, a comparison was made of material purchases per books to the total sales per books for the period

June 1, 1978 through February 28, 1982. Material costs represented 41.141% of sales. This percentage was applied to the total sales for which purchases were tax exempt of \$920,282.00 and resulted in tax exempt purchases of \$378,613.00. Material purchases for the period June 1, 1978 through May 31, 1982 totaled \$2,074,438.00. Material purchases subject to use tax totaled \$1,624,869.00 (total purchases of \$2,074,438.00 minus \$378,613.00 of tax exempt purchases, minus purchases tax paid per test of \$70,956.00). Prior to completion of the audit, Notice number S821220400K was issued to petitioner (see Finding of Fact "2(b)") assessing material purchases of \$655,215.00. Due to expiration of the statute of limitation, the petitioner, at that point in time, could not be assessed for periods prior to June 1, 1980. Therefore, the petitioner was assessed only for material purchases totaling \$1,090,106.00 for use tax due of \$88,142.67.

(b) Factory expense purchases were reviewed for the entire audit period and resulted in purchases subject to use tax of \$14,662.00. Auto expense purchases subject to use tax totaled \$212.86 for the test period December 1, 1980 through February 28, 1981. This amount was applied to the total tested resulting in a percentage of error of 8.29%. This percentage was applied to the total auto expenses for the audit period and resulted in auto expenses subject to use tax of \$2,639.00. Expense purchases subject to use tax totaled \$17,301.00 with a use tax due thereon of \$1,388.70. This amount was assessed.

(c) The total amount assessed against Concord Metal as a result of the above was \$89,531.37.

11. (a) The examiner reviewed the sales tax payable amount of petitioner Union Port Steel for the audit period and found that this petitioner did not remit sales taxes of \$109.61. This amount was assessed.

(b) The examiner reviewed material purchases for the period June 1, 1978 through May 31, 1982 and found that tax was not paid on \$62,429.10 of these purchases. Since adequate data was not made available to determine the cost of purchases used to perform contracting jobs, a comparison was made of material purchases per books to the total sales per books for the audit period. Material costs represented 25.66% of sales for the period June 1, 1978 through May 31, 1980 and 55.53% for the period June 1, 1980 through May 31, 1982. (Two percentages were found because both purchases and sales increased greatly during the later period). These percentages were applied to the sales for which purchases were tax exempt of \$153,461.00 (as supplied by petitioner) and resulted in tax exempt purchases of \$57,342.00. Material purchases subject to use tax totaled \$5,087.10 (purchases where tax was not paid of \$62,429.10 minus tax exempt purchases of \$57,342.00) with tax due thereon of \$356.54. Prior to completion of the audit, Notice number S821220401K was issued to petitioner (see Finding of Fact "2(c)") assessing material purchases of \$52,470.00. Therefore an adjustment was made to reflect the above findings (see Finding of Fact "6(e)").

(c) The total amount due from Union Port Steel as a result of the above was \$466.15.

12. That with the exception of the tax determined to be due on the cost of materials used to perform jobs, the petitioners maintained complete and adequate books and records from which their exact tax liability could have been determined. The petitioners did not agree to the use of a test period to determine their sales or use tax liability.

CONCLUSIONS OF LAW

A. That the notices of determination and demand for payment of sales and use taxes due were not jurisdictionally defective merely because they were issued (mailed) nineteen days prior to the date indicated thereon. Section 1147 of the Tax Law provides, in pertinent part, that 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. The petitioners timely protested the notices at issue and, therefore, it can not be said that the difference between the date the notices were issued and the date indicated thereon prejudiced or adversely affected petitioners' position in this matter.

B. That although there is statutory authority for the use of a "test period" to determine the amount of tax due when a filed return is incorrect or insufficient (Tax Law §1138, subd. [a]), resort to this method of computing tax liability must be founded upon an insufficiency of record keeping which makes it virtually impossible to verify taxable sales receipts and conduct a complete audit (citations omitted). (Matter of Chartair, Inc. v. State Tax Comm. [65 AD2d 44, 46]). With the exception of the tax determined on material costs, the petitioners maintained adequate books and records to determine their sales and use tax liability. Therefore, the Audit Division's use of a "test period" method of audit was not proper.

C. That the petition of Union Port Glass Co., Inc. is granted to the extent indicated in Conclusion of Law "B"; the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued December 1, 1982 and September 20, 1983 to reflect the taxes found due for the test period on disallowed nontaxable sales, increased taxable

sales and expense purchases (see Findings of Fact "9(b) and (d)"); and that except as so granted the petition is denied.

D. That the petition of Concord Metal Store Front Co., Inc. is granted to the extend indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued December 1, 1982, September 20, 1983 and November 20, 1983 to reflect the taxes found due for the test period on auto expense purchases (see Finding of Fact "10(b)"); and that except as so granted, the petition is denied.

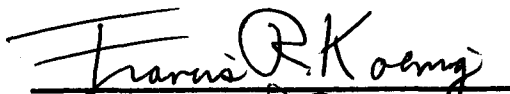
E. That the petition of Union Port Steel Sash Sales, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 1, 1982 and revised on January 3, 1984 (see Finding of Fact "6(e)") is sustained.

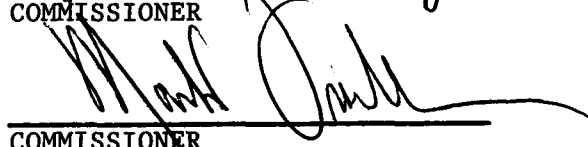
DATED: Albany, New York

JAN 28 1986

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER