

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Atlantic Sheet Metal Works, Inc. : 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 6/1/78-11/30/81.

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 9th day of June, 1987, he/she served the within notice of decision by certified mail upon Atlantic Sheet Metal Works, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

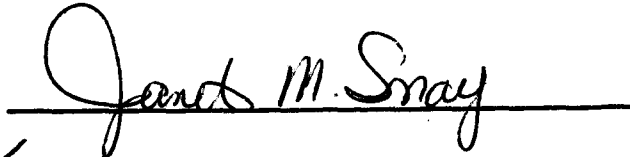
Atlantic Sheet Metal Works, Inc.
c/o Abe Rosenblatt
25 Jericho Turnpike
Mineola, NY 11501

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
9th day of June, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Atlantic Sheet Metal Works, Inc. : 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 :
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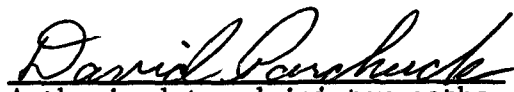
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 9th day of June, 1987, he served the within notice of decision by certified mail upon Abe Rosenblatt, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

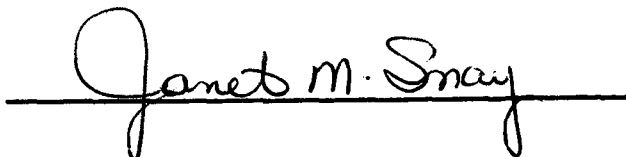
Abe Rosenblatt
25 Jericho Turnpike
Mineola, NY 11501

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
9th day of June, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

June 9, 1987

Atlantic Sheet Metal Works, Inc.
c/o Abe Rosenblatt
25 Jericho Turnpike
Mineola, NY 11501

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
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:
Abe Rosenblatt
25 Jericho Turnpike
Mineola, NY 11501

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ATLANTIC SHEET METAL WORKS, 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 November 30, 1981.	:	

Petitioner, Atlantic Sheet Metal Works, Inc., c/o Abe Rosenblatt, 25 Jericho Turnpike, Mineola, New York 11501, 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 June 1, 1978 through November 30, 1981 (File No. 39958).

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 4, 1986 at 9:15 A.M. Petitioner did not appear. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether penalty and that portion of interest exceeding the minimum rate prescribed by law should be cancelled.

FINDINGS OF FACT

1. On July 20, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Atlantic Sheet Metal Works, Inc. covering the period June 1, 1978 through November 30, 1981 for taxes due of \$38,414.04 plus penalty of \$8,221.27 and interest of \$9,514.51, for a total of \$56,149.82.

2. Petitioner timely filed a petition for revision of the above determination.

3. Petitioner executed a Withdrawal of Petition and Discontinuance of Case, dated April 19, 1986, whereby it agreed to a revised tax due of \$21,933.91. The withdrawal indicated no penalty due and interest was to be computed at the minimum rate. The auditor had recommended that penalty be cancelled and interest be reduced to minimum interest. Subsequently petitioner was advised that because the amount of the penalty to be abated was in excess of \$5,000.00, it had to be approved by the Tax Commission. Petitioner was further advised of the procedure to follow for making such application to the Tax Commission. After several attempts to obtain the application failed, petitioner was advised that the matter would be scheduled for a hearing to address the issue of penalty. A hearing was scheduled on December 4, 1986. Neither the petitioner nor its representative appeared at the hearing.

CONCLUSIONS OF LAW

A. That section 1145(a)(1)(i) of the Tax Law provides for the imposition of penalty and interest for failure to file a return or pay over any tax when due. Former subparagraph (ii) of said section provides for the remission of penalty and that portion of interest that exceeds the minimum rate if the Tax Commission determines that the failure or delay was due to reasonable cause and not due to willful neglect.

B. That 20 NYCRR 536.1(b) (former 20 NYCRR 536.5[b]) provides:

"Reasonable Cause. In determining whether reasonable cause exists, either as a basis for remitting assessed interest or penalties or as grounds for remitting interest or penalties upon the late filing of a return or payment, the taxpayer's previous compliance record may be taken into account. Reasonable cause for failure to file a return on time must be affirmatively shown by the taxpayer in a

written statement. Grounds for reasonable cause, where clearly established, may include the following:

- (1) death or serious illness of the taxpayer, a responsible officer or employee of the taxpayer, or his unavoidable absence from his usual place of business;
- (2) destruction of the taxpayer's place of business or business records by fire or other casualty;
- (3) timely prepared returns misplaced by the taxpayer or a responsible employee of the taxpayer and discovered after the due date;
- (4) inability to obtain and assemble essential information required for the preparation of a complete return despite reasonable efforts;
- (5) pending petition to Tax Commission or formal hearing proceedings involving a question or issue affecting the computation of tax for the year, quarter, month or other period of delinquency; or
- (6) any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Past performance will be taken into account. Ignorance of the law, however, will not be considered reasonable cause."

C. That petitioner failed to establish that reasonable cause existed for the underpayment of sales and use taxes for the period at issue. Accordingly the imposition of penalty and interest is sustained.

D. That the petition of Atlantic Sheet Metal Works, Inc. is granted to the extent that the principal amount of tax is reduced from \$38,141.04 to \$21,933.91; the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 20, 1982; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 09 1987

Richard A. Chen
PRESIDENT
Francis R. Koling
COMMISSIONER
Mark J. Hill
COMMISSIONER