

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Robert W. and Donald J. Bilicki : AFFIDAVIT OF MAILING
d/b/a Bob's Rocky Point Service Station

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 9/1/79-2/28/81.

State of New York :

ss.:

County of Albany :

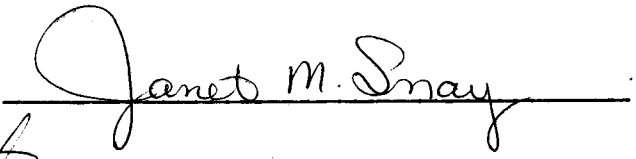
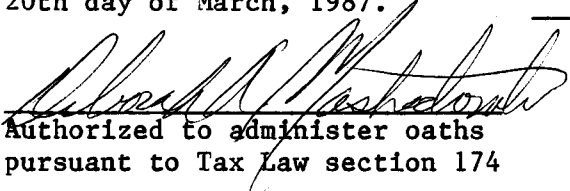
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of March, 1987, he/she served the within notice of decision by certified mail upon Robert W. and Donald J. Bilicki, d/b/a Bob's Rocky Point Service Station the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert W. and Donald J. Bilicki
d/b/a Bob's Rocky Point Service Station
4 Mahogany Rd.
Rocky Point, NY 11778

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 March, 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
Bob's Rocky Point Service Station : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Unincorporated
Business Tax under Article(s) 23 of the Tax Law :
for the Years 1979 & 1980.

State of New York :

ss.:

County of Albany :

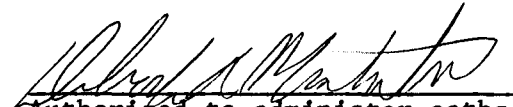
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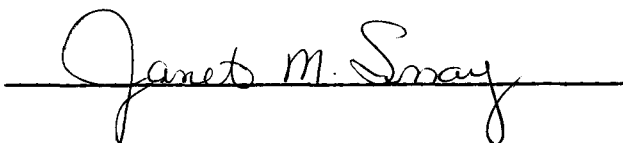
Bob's Rocky Point Service Station
Rt. 25A & Rocky Point
Rocky Point, NY 11778

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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Donald & Sandra Bilicki : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law :
for the Year 1979 & 1980.

State of New York :

ss.:

County of Albany :

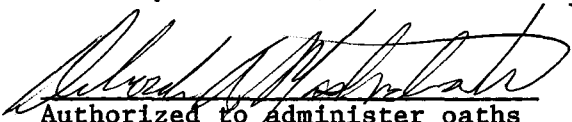
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Donald & Sandra Bilicki
Prince Road
Rocky Point, NY 11778

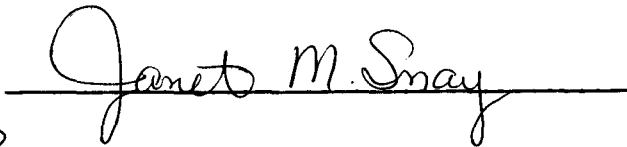
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Sworn to before me this
20th day of March, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Robert & Alice Bilicki :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income
Tax under Article(s) 22 of the Tax Law :
for the Year 1979 & 1980.

State of New York :

ss.:

County of Albany :

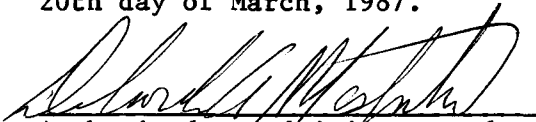
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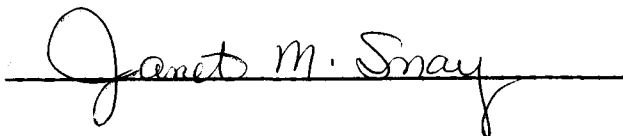
Robert & Alice Bilicki
4 Mahogany Road
Rocky Point, NY 11778

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STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Robert W. and Donald J. Bilicki : AFFIDAVIT OF MAILING
d/b/a Bob's Rocky Point Service Station

for Redetermination of a Deficiency or Revision :
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under Article(s) 28 & 29 of the Tax Law :
for the Period 9/1/79-2/28/81.

State of New York :

ss.:

County of Albany :

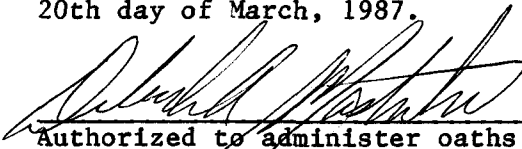
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of March, 1987, he served the within notice of decision by certified mail upon Peter R. Newman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter R. Newman
350 Veterans Memorial Highway
Commack, NY 11725

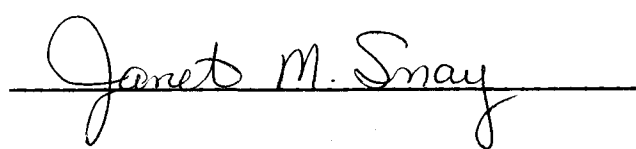
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That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
20th day of March, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bob's Rocky Point Service Station : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Unincorporated
Business Tax under Article(s) 23 of the Tax Law :
for the Years 1979 & 1980.

State of New York :
ss.:
County of Albany :

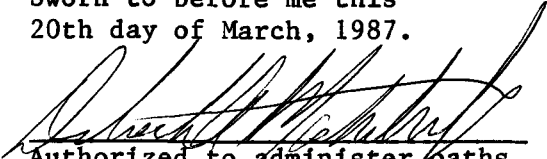
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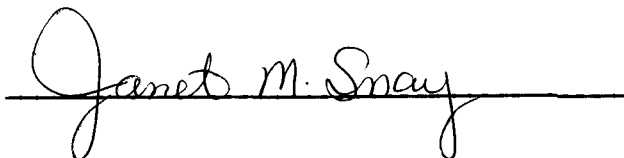
Peter R. Newman
350 Veterans Memorial Highway
Commack, NY 11725

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pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Donald & Sandra Bilicki :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law :
for the Year 1979 & 1980.

State of New York :

ss.:

County of Albany :

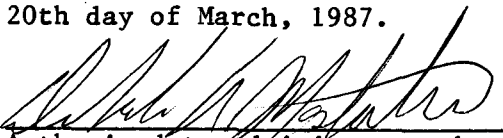
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350 Veterans Memorial Highway
Commack, NY 11725

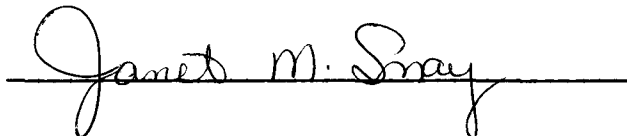
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Sworn to before me this
20th day of March, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Robert & Alice Bilicki

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article(s) 22 of the Tax Law :
for the Year 1979 & 1980.

State of New York :

ss.:

County of Albany :


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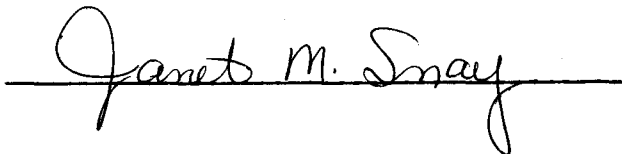
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Sworn to before me this
20th day of March, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

March 20, 1987

Robert W. and Donald J. Bilicki
d/b/a Bob's Rocky Point Service Station
4 Mahogany Rd.
Rocky Point, NY 11778

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:
Peter R. Newman
350 Veterans Memorial Highway
Commack, NY 11725

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

March 20, 1987

Bob's Rocky Point Service Station
Rt. 25A & Rocky Point
Rocky Point, NY 11778

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) 690 & 722 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:
Peter R. Newman
350 Veterans Memorial Highway
Commack, NY 11725

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

March 20, 1987

Donald & Sandra Bilicki
Prince Road
Rocky Point, NY 11778

Dear Mr. & Mrs. Bilicki:

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) 690 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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Albany, New York 12227
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Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Peter R. Newman
350 Veterans Memorial Highway
Commack, NY 11725

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

March 20, 1987

Robert & Alice Bilicki
4 Mahogany Road
Rocky Point, NY 11778

Dear Mr. & Mrs. Bilicki:

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) 690 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.

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STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Peter R. Newman
350 Veterans Memorial Highway
Commack, NY 11725

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT W. BILICKI AND DONALD J. BILICKI
D/B/A BOB'S ROCKY POINT SERVICE STATION

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, 1979
through February 28, 1981.

In the Matter of the Petition

of

BOB'S ROCKY POINT SERVICE STATION

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1979
and 1980.

DECISION

In the Matter of the Petition

of

DONALD AND SANDRA BILICKI

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1979 and 1980.

In the Matter of the Petition

of

ROBERT AND ALICE BILICKI

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1979 and 1980.

Petitioners, Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station, 4 Mahogany Road, Rocky Point, New York 11778, 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, 1979 through February 28, 1981 (File No. 41112).

Petitioner, Bob's Rocky Point Service Station, Route 25A and Rocky Point, Rocky Point, New York 11778, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1979 and 1980 (File No. 49222).

Petitioners, Donald and Sandra Bilicki, Prince Road, Rocky Point, New York 11778, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 49223).

Petitioners, Robert and Alice Bilicki, 4 Mahogany Road, Rocky Point, New York 11778, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 49224).

On August 4, 1986, petitioners' representative, Peter R. Newman, Esq., executed a waiver of hearing and submitted their cases for decision based upon the existing record, together with briefs to be submitted by the parties on or before October 23, 1986. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUE

Whether penalties asserted against petitioners should be reduced or abated.

FINDINGS OF FACT

1. Pursuant to a field audit of petitioner Bob's Rocky Point Service Station which commenced in October of 1981, the Audit Division issued the following:

a) Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. S820319055F) to Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station issued on March 19, 1982 in the amount of \$9,132.60, plus penalty and interest, for a total amount due of \$14,481.90 for the period December 1, 1978 through August 31, 1979;

b) Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. S820910158C) to Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station issued on September 10, 1982 in the amount of \$7,143.50, plus penalty and interest, for a total amount due of \$10,857.34 for the period September 1, 1979 through February 28, 1981;

c) Notice of Deficiency (Assessment No. A8310090131) to Bob's Rocky Point Service Station on October 5, 1983 for unincorporated business tax due for the years 1979 and 1980 in the amount of \$6,839.00, plus interest and penalty asserted pursuant to section 685(b) of the Tax Law for 1979 and penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law for the year 1980, for a total amount due of \$10,118.58;

d) Notice of Deficiency (Assessment No. A8310090111) to Robert and Alice Bilicki on October 5, 1983 for personal income tax due for the years 1979 and 1980 in the amount of \$10,537.00, plus interest and penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law, for a total amount due of \$19,652.13;

e) Notice of Deficiency (Assessment No. A8310090121) to Donald and Sandra Bilicki on October 5, 1983 for personal income tax due for the years 1979 and 1980 in the amount of \$10,034.00, plus interest and penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law, for a total amount due of \$18,778.40.

2. As a result of a pre-hearing conference and additional information submitted by petitioners' representative, the Audit Division agreed to the following revisions:

a) Notices of determination and demands for payment of sales and use taxes due (Notice No. S820319055F issued March 19, 1982 and Notice No. S820910158C issued September 10, 1982) issued to Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station revised to \$9,021.60, plus penalties and interest;

b) Notice of Deficiency for unincorporated business tax due (Assessment No. A8310090131) issued to Bob's Rocky Point Service Station on October 5, 1983 revised to \$3,383.00, plus penalties and interest;

c) Notice of Deficiency for personal income tax due (Assessment No. A8310090111) issued to Robert and Alice Bilicki on October 5, 1983 revised to \$2,952.00, plus penalties and interest;

d) Notice of Deficiency for personal income tax due (Assessment No. A8310090121) issued to Donald and Sandra Bilicki on October 5, 1983 revised to \$2,298.00, plus penalties and interest.

3. On August 4, 1986, petitioners' representative, Peter R. Newman, Esq., executed partial withdrawals of petition and discontinuances of case agreeing to the revisions as set forth in Finding of Fact "2", plus interest to be computed by the Audit Division. Therefore, the sole remaining issue herein is

whether penalties asserted against petitioners pursuant to the notices of determination and demands for payment of sales and use taxes due and notices of deficiency issued by the Audit Division should be reduced or abated.

4. Pursuant to the waiver of hearing executed by petitioners' representative on August 4, 1986, time was reserved for submission of petitioners' brief to be due on or before September 8, 1986. Petitioners neither submitted a brief on or before said date nor did petitioners or their representative ever request an extension for time to submit such brief.

CONCLUSIONS OF LAW

A. That, for the years at issue, the Tax Law imposed penalties for failure to file a tax return and for failure to pay or pay over tax shown on a return (Tax Law §§ 685[a][1], [2]; 1145[a][1]). In the case of an income tax deficiency, if such deficiency is due to negligence or intentional disregard of the provisions of Article 22 of the Tax Law or the rules and regulations promulgated thereunder, an additional penalty may be imposed (Tax Law § 685[b]).

B. That upon a determination by the Audit Division that such failure to file or pay was due to reasonable cause and not due to willful neglect, the aforesaid penalties shall not be imposed or, if imposed prior to such determination, shall be remitted by the Tax Commission.

C. That the record herein is completely devoid of any evidence upon which a determination can be made as to whether reasonable cause existed for petitioners' failure to file returns or pay or pay over personal income, unincorporated business or sales taxes. The penalties imposed upon petitioners by the Audit Division are, therefore, sustained.


D. That the petitions of Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station, Bob's Rocky Point Service Station, Donald

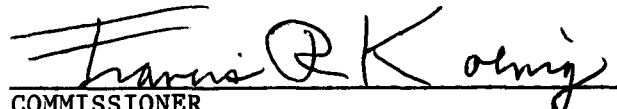
and Sandra Bilicki and Robert and Alice Bilicki are granted only to the extent indicated in Findings of Fact "2" and "3"; that the Audit Division is directed to modify the notices of determination and demands for payment of sales and use taxes due issued March 19, 1982 and September 10, 1982 and the notices of deficiency issued October 5, 1983 accordingly; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER