

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of  
Jerry's Kiddie Dashery, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales and Use  
Tax under Article(s) 28 & 29 of the Tax Law :  
for the Period 12/01/81 - 08/31/83.

---

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 6th day of April, 1987, he/she served the within notice of decision by certified mail upon Jerry's Kiddie Dashery, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

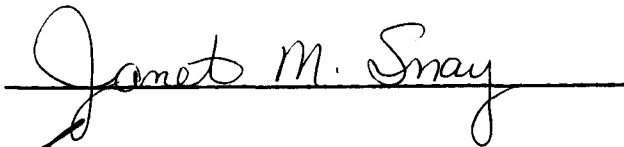
Jerry's Kiddie Dashery, Inc.  
1655 First Avenue  
New York, NY 10028

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  
6th day of April, 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  
Jerry's Kiddie Dashery, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales and Use  
Tax under Article(s) 28 & 29 of the Tax Law :  
for the Period 12/01/81 - 08/31/83.

---

State of New York :

ss.:

County of Albany :

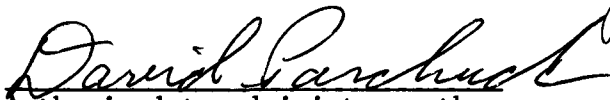
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 6th day of April, 1987, he served the within notice of decision by certified mail upon Lester E. Levin, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

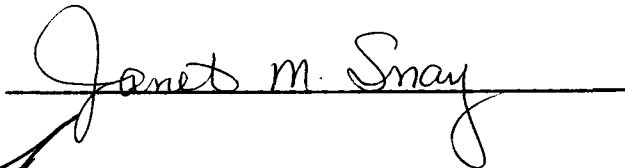
Lester E. Levin  
501 5th Avenue - Rm. 1204  
New York, NY 10017

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  
6th day of April, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

April 6, 1987

Jerry's Kiddie Dashery, Inc.  
1655 First Avenue  
New York, NY 10028

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:  
Lester E. Levin  
501 5th Avenue - Rm. 1204  
New York, NY 10017

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
JERRY'S KIDDIE DASHERY, 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 December 1, 1981	:	
through August 31, 1983.	:	

---

Petitioner, Jerry's Kiddie Dashery, Inc., 1655 First Avenue, New York, New York 10028, 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, 1981 through August 31, 1983 (File No. 60442).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 22, 1986 at 9:15 A.M., with all briefs to be submitted by January 19, 1987. Petitioner appeared by Lester E. Levin, CPA and Jerome D. LeBowitz, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

#### ISSUE

Whether the Audit Division properly disallowed certain sales which petitioner claims to have been exempt from sales tax by virtue of the fact that said sales were made to diplomatic personnel or officers of permanent missions to the United Nations.

#### FINDINGS OF FACT

1. On February 8, 1985, the Audit Division issued to Jerry's Kiddie Dashery, Inc. (hereinafter "petitioner") a Notice of Determination and Demand

for Payment of Sales and Use Taxes Due for the period December 1, 1981 through August 31, 1983 in the amount of \$21,154.89, plus penalty of \$5,162.04 and interest of \$6,158.63, for a total amount due of \$32,475.56.

2. Petitioner operated a children's clothing store located at 1655 First Avenue, New York, New York, a location which is near the United Nations headquarters. Said store commenced operation in 1955. Petitioner was incorporated in 1962 and continued to operate the clothing store until April 1985.

3. In 1984, a field audit of petitioner was performed by the Audit Division. Gross sales reported on petitioner's Federal corporation income tax returns did not agree with amounts reported by petitioner on its New York State sales tax returns. Pursuant to an agreement with petitioner's representative, a test period audit was performed using petitioner's sales invoices for the months of November 1981, March 1982 and July 1982. From an examination of these invoices, it was determined that petitioner had reported 43.1 percent of its sales as exempt sales to diplomatic personnel or officers of permanent missions to the United Nations (hereinafter "mission officers"). The invoices contained the diplomat's or mission officer's identification number and the country represented, but contained neither the diplomat's or mission officer's name nor any other information required by the Audit Division for a properly completed exemption certificate. Petitioner did not obtain a completed form ST-126, New York State and Local Sales Tax Certificate of Diplomatic and Consular Tax Exemption from its diplomat or mission officer customers. All of the sales which petitioner alleges were made to diplomatic or mission officer personnel were disallowed by the Audit Division and were held, therefore, to be subject to sales tax.

4. Petitioner alleges that the Department of Taxation and Finance has failed to properly alert and advise taxpayers on current policies regarding

documentation required to substantiate sales to diplomatic or mission officer personnel. As part of its petition, petitioner attached a copy of Volume 12, Number 1 of Sales Tax Newsletter (March 1985) which petitioner contends is evidence of a new departmental policy of enforcement which, prior to the issuance of new photo identification cards (DTF-10), was not uniformly enforced. Petitioner further contends that Form ST-126, New York State and Local Sales Tax Certificate of Diplomatic and Consular Tax Exemption, was not issued until May 1983, a date which is subsequent to most of the period at issue herein.

CONCLUSIONS OF LAW

A. That Department of Taxation and Finance Form ST-126, New York State and Local Sales Tax Certificate of Diplomatic and Consular Tax Exemption, was initially issued by the Department in September 1965.

B. That Volume 5, Number 1 of Sales Tax Newsletter (March 1977) which was sent to all registered vendors, provided, in pertinent part, as follows:

"DON'T JUST TAKE A NUMBER

Acceptance by a vendor of an identification number or exemption number, instead of a properly completed exemption certificate, does not relieve the vendor of his responsibility for collecting tax. To be properly completed, all the required information on the exemption certificate must be entered and the certificate must be signed."

C. That 20 NYCRR 529.6, filed on November 24, 1982 and which was, therefore, in effect for three of the seven sales tax quarters at issue herein, provided, in pertinent part, that when claiming exemption from sales tax, diplomatic personnel and/or mission officers or their spouses must furnish the vendor with a properly completed certificate of diplomatic and consular tax exemption and must also present his or her numbered identification card to the vendor for a signature comparison. Subdivisions (a)(5) and (b)(4) of 20 NYCRR 529.6 provided that:

"A certificate is properly completed when it contains the:

- (i) date the certificate is executed;
- (ii) identification card number;
- (iii) name and address of the issuer;
- (iv) official title of the person to whom the identification number was assigned;
- (v) country represented; and
- (vi) signature of the issuer of the certificate."

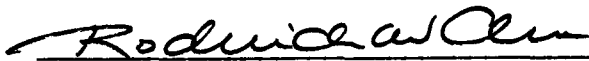
D. That it is the practice of the Department of Taxation and Finance to mail to every registered vendor copies of each Sales Tax Newsletter. As indicated in Finding of Fact "4", petitioner, in furtherance of its position, attached a copy of Volume 12, Number 1 (March 1985) of said newsletter. It may be presumed, therefore, that since petitioner commenced doing business in its corporate form in 1962 and was a registered vendor for such purposes, it also received a copy of Volume 5, Number 1 (March 1977) of such newsletter, the pertinent portions of which are set forth in Conclusion of Law "B", supra. Despite this presumption, the existence of Form ST-126 and the promulgation of pertinent regulations (20 NYCRR 529.6) by the State Tax Commission, petitioner failed to obtain properly completed exemption certificates from mission officers and/or diplomats, sales to whom petitioner alleges are exempt from the imposition of sales tax. Petitioner obtained from these purchasers only the identification numbers and countries represented and failed to obtain a properly completed certificate or, in the alternative, all of the information required on such certificate. By its failure to obtain a properly completed certificate or obtain all of the required information, petitioner has failed to meet its burden of proving that such sales were made to diplomats and/or mission officers and are, therefore, exempt from the imposition of sales tax.

E. That the petition of Jerry's Kiddie Dashery, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 8, 1985 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER