

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Victoria Sullivan : AFFIDAVIT OF MAILING
a/k/a Victoria DiForio, :
as Officer of Impressions Reproductions Corp. :
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 12/1/77-11/30/79. :
_____:

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 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Victoria Sullivan, a/k/a Victoria DiForio, as Officer of Impressions Reproductions Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Victoria Sullivan
a/k/a Victoria DiForio
as Officer of Impressions Reproductions Corp.
153 Larchmont Ave.
Larchmont, NY 10538

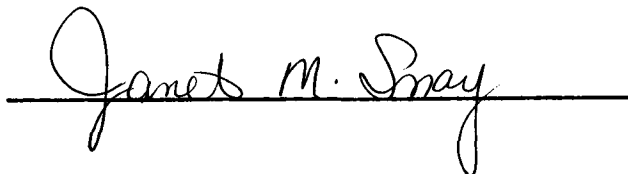
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
13th 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 :
Victoria Sullivan : AFFIDAVIT OF MAILING
a/k/a Victoria DiForio, :
as Officer of Impressions Reproductions Corp. :
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 12/1/77-11/30/79. :
_____:

State of New York :

ss.:

County of Albany :

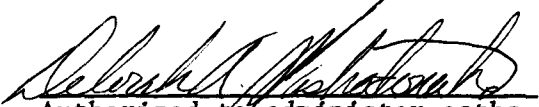
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he served the within notice of Decision by certified mail upon Thomas G. Vaughan, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

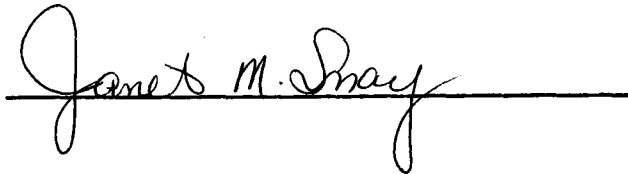
Thomas G. Vaughan
Jones, Hirsch, Connors & Bull
Chrysler Bldg., 405 Lexington Ave.
New York, NY 10174

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
13th 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 13, 1987

Victoria Sullivan
a/k/a Victoria DiForio
as Officer of Impressions Reproductions Corp.
153 Larchmont Ave.
Larchmont, NY 10538

Dear Ms. Sullivan:

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:
Thomas G. Vaughan
Jones, Hirsch, Connors & Bull
Chrysler Bldg., 405 Lexington Ave.
New York, NY 10174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

VICTORIA SULLIVAN,
A/K/A VICTORIA DIFORIO
AS OFFICER OF IMPRESSIONS REPRODUCTIONS CORP.

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, 1977
through November 30, 1979.

Petitioner, Victoria Sullivan a/k/a Victoria DiForio, 153 Larchmont Avenue, Larchmont, New York 10538, 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, 1977 through November 30, 1979 (File No. 57254).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1986 at 10:00 A.M. Petitioner appeared by Jones, Hirsch, Connors & Bull (Thomas G. Vaughan, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect tax on behalf of Impressions Reproductions Corp.

FINDINGS OF FACT

1. On September 12, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner under the name Victoria DiForio, for \$21,147.61 in tax, \$4,162.16 in penalty, plus interest,

on the basis that petitioner was "liable individually and as officer of Impressions Reproductions Corp., under Sections 1131(1) and 1133 of the Tax Law".

2. In or about June 1975, Carl DiForio and Thomas Matthewson, both salesmen for Xerox Corp., Roland Long, a technician for Xerox Corp., and petitioner, a secretary, who was Carl DiForio's wife, formed Impressions Reproductions Corp. ("the corporation"). All left their former jobs and joined the corporation to work full time.

3. Petitioner was named secretary-treasurer of the corporation. Mr. DiForio, Mr. Long and Mr. Matthewson were also officers. Each of the officers was issued 25 percent of the stock of the corporation.

4. The corporation operated a printing and copying business at 1990 Palmer Avenue, Larchmont, New York.

5. Petitioner served as receptionist, typist and clerk. Her duties consisted of typing letters and invoices, making job schedules and performing general office work. She was a signatory on the corporation's checking account, but signed checks only in emergency situations, e.g., C.O.D. shipments.

6. Carl DiForio signed almost all checks, including payroll checks, checks to suppliers and checks for taxes. All mail relating to finances and taxes was given to Mr. DiForio. He made most of the financial decisions for the corporation.

7. During the period at issue, all officers of the corporation were paid the same amount, \$170.00 per week.

8. The business was not financially successful and ultimately failed. The Westchester County Sheriff seized the business assets in 1979 or 1980.

9. Petitioner and Carl DiForio had been married in 1969. Carl DiForio stopped living with petitioner shortly after the business was formed in June 1975. They were subsequently divorced in 1980.

CONCLUSIONS OF LAW

A. That Tax Law § 1133(a) provides that every person required to collect any tax imposed by Article 28 of the Tax Law shall be personally liable for the tax imposed, collected or required to be collected thereunder.

B. That during the period at issue, Tax Law § 1131(1) provided as follows:

"(1) 'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel. Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."

C. That petitioner was not a person required to collect tax on behalf of Impressions Reproductions Corp. within the meaning of Tax Law §§ 1133(a) and 1131(1). While petitioner was nominally secretary-treasurer of the corporation, she was in fact merely an office worker and had no control over the financial affairs of the corporation.


D. That the petition of Victoria Sullivan a/k/a Victoria DiForio is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 12, 1984 is cancelled.

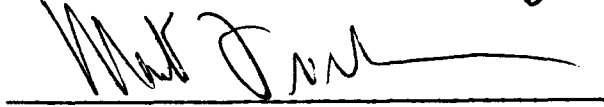
DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987


PRESIDENT


COMMISSIONER


COMMISSIONER