

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Rae Terkeltaub

:

:

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 Ending 5/30/79.

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 16th day of January, 1987, he/she served the within notice of Decision by certified mail upon Rae Terkeltaub the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rae Terkeltaub  
2940 Ocean Pkwy., Apt. 19-0  
Brooklyn, New York 11235

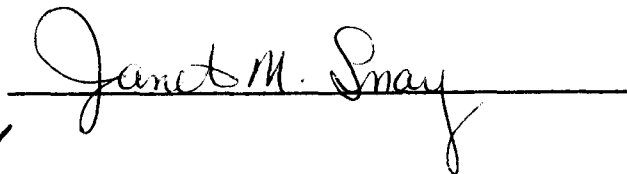
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
16th day of January, 1987.



Authorized to administer oaths  
pursuant to Tax Law section 174



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

January 16, 1987

Rae Terkeltaub  
2940 Ocean Pkwy., Apt. 19-0  
Brooklyn, New York 11235

Dear Ms. Terkeltaub:

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) 1139 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

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition

of

RAE TERKLETAUB

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 ended  
May 30, 1979.

---

Petitioner, Rae Terkletaub, 2940 Ocean Parkway, Apt. 19-0, Brooklyn, New York 11235, 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 ended May 30, 1979 (File No. 55034).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 8, 1986 at 4:00 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Michael Glannon, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's application for a refund of sales tax paid.

FINDINGS OF FACT

1. On or about September 28, 1982, petitioner, Rae Terkletaub, filed an Application for Credit or Refund of State and Local Sales and Use Tax in the amount of \$30.00.

2. On May 30, 1984, the Audit Division denied \$14.00 of petitioner's claim on the basis that the application was not filed within three years after the date the tax was payable.

3. The \$14.00 at issue represents sales tax paid by petitioner to Brighton Beach Baths, Inc. for the rental of a bath cabana. Petitioner paid the tax on April 6, 1979.

CONCLUSION OF LAW

A. That pursuant to Tax Law § 1139(a)(1) in the case of tax paid to a person required to collect tax an application for a refund of tax paid must be made within three years after the date when the tax was payable by such person to the State.


B. That Brighton Beach Bath, Inc. was required to pay the tax collected from petitioner to New York State by June 20, 1979 (Tax Law §§ 1136[5] and 1137[a]). Accordingly, petitioner's application for a refund was made more than three years after the sales tax of \$14.00 was payable to the State.

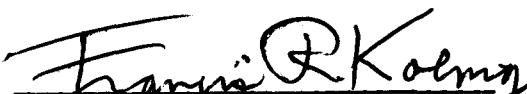
C. That the petition of Rae Terkletaub is denied, and the denial of petitioner's Application for Credit or Refund of State and Local Sales and Use Taxes is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 16 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER