

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :

of :

DUTCHESS SANITATION SERVICE, INC. : DECISION
and JOSEPH FIORILLO, OFFICER OF
DUTCHESS SANITATION SERVICE, INC. :

for Revision of Determinations or for Refund :
of Sales and Use Taxes under Articles 28 and 29
of the Tax Law for the Period December 1, 1975 :
through November 30, 1978.

Petitioners, Dutchess Sanitation Service, Inc., 2 La Grange Avenue, Poughkeepsie, New York 12603 and Joseph Fiorillo, Officer of Dutchess Sanitation Service, Inc., Pleasant View Road, Poughkeepsie, New York 12603, filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1975 through November 30, 1978 (File Nos. 29798 and 30141).

A small claims hearing was held before John F. Koagel, Hearing Officer, at the offices of the State Tax Commission, Building 9, Room 107, State Campus, Albany, New York 12227, on December 8, 1982 at 9:15 A.M. and continued to its conclusion on October 4, 1983 at 10:30 A.M. with all evidence to be submitted no later than January 5, 1984. Petitioners appeared by Steven Greenwold, Esq. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUES

I. Whether the audit procedures used by the Audit Division to determine additional tax due were proper.

II. Whether petitioners are entitled to offset any liability determined to be due by an allowance for bad debts incurred during the period at issue.

FINDINGS OF FACT

1. On April 10, 1980, as a result of a field audit of petitioner Dutchess Sanitation Service, Inc. (hereinafter "Dutchess"), two notices of determination and demand for payment of sales and use taxes due were issued. One was issued to Dutchess for tax in the amount of \$12,022.83 plus interest of \$961.25 for a total of \$12,984.08. The other was issued to Joseph Fiorillo, Officer of Dutchess Sanitation Service, Inc., for tax in the amount of \$9,516.01 plus interest of \$460.32 for a total of \$9,976.33. Both notices covered the period December 1, 1975 through November 30, 1978.

2. Petitioners consented in writing to extend the period in which to assess the period of December 1, 1975 through November 30, 1977 to December 20, 1980.

3. Dutchess, an entity which has now ceased business, was a refuse hauler in the Poughkeepsie, New York area which serviced both residential and commercial accounts. Mr. Joseph Fiorillo was vice president of Dutchess.

4. The audit of Dutchess resulted in a determination of tax due in the areas of recurring purchases, equipment purchases, disallowed exempt sales and the bulk sale of assets. For the areas of recurring purchases and disallowed exempt sales, test periods were used. Petitioner Joseph Fiorillo was assessed the same as Dutchess less the tax determined due on the equipment and recurring purchases.

5. Petitioner Dutchess maintained sales and purchase records which were adequate in order for the Audit Division to determine the exact tax due for the audit period.

6. At the October 4, 1983 hearing petitioners and the Audit Division stipulated the following:

a.) That with regards to the audit, the additional tax determined due be reduced to \$5,357.67 as follows:

1) Recurring Purchases	-	\$1,881.82
2) Equipment	-	625.00
3) Exempt Sales (Disallowed)	-	100.85
4) Bulk Sale of Assets	-	2,750.00
TOTAL		<u>\$5,357.67</u>

b.) That payment of \$2,750.00 would be made.

c.) That with regards to the bad debts, credit would be claimed up to the \$2,607.67 difference between the revised audited tax due of \$5,357.67 and the payment of \$2,750.00; the following timetable was to apply with respect to submission of documentation in connection therewith:

- 1) Petitioners would submit their accounting records pertaining to bad debts to the Audit Division by November 4, 1983.
- 2) The Audit Division would review all records submitted to determine if the bad debts were for transactions occurring within the audit period and also to determine if the bad debts in question were written off on the applicable Federal tax returns of Dutchess.
- 3) Any records not presented by November 4, 1983 would be deemed not to exist.
- 4) That the Audit Division had until December 5, 1983 to analyze all submitted documentation and submit to petitioner a list of those customers reflecting valid bad debts and a list of those customers not reflecting valid bad debts supported by the reasons for which they were determined invalid.
- 5) Petitioners would have until December 20, 1983 to submit further documentation for those bad debts determined to be invalid.
- 6) That the Audit Division would have until January 5, 1984 to consider the additional documentation and concede, in writing, any additional bad debts claims determined to be valid.
- 7) That the hearing officer would consider any remaining disputed items.

7. On November 2, 1983 petitioner Joseph Fiorillo submitted two checks totaling \$2,750.00 to the Audit Division. Mr. Fiorillo also submitted numerous records pertaining to bad debts along with Federal corporation tax returns covering the audit period with the exception of the period September 1, 1976 through December 31, 1976; said returns disclosed no bad debts write offs. Based on regulation 20 NYCRR 525.5(c)(4), the Audit Division determined that petitioners were not entitled to write off any bad debts.

8. On December 20, 1983 petitioner Joseph Fiorillo submitted to the Audit Division the Federal and the New York State corporation tax returns covering the period September 1, 1976 through December 31, 1976. These returns reflected no deduction(s) for bad debts, however a note was left with the returns stating that the deduction was made to sales prior to the preparation of the returns, that the sales reflected on the returns were sales net of bad debts and that the adjustments were made on worksheets. The representative of the Audit Division alleged that he did not have the worksheets as they were never submitted.

9. No documentation concerning the bad debts was ever submitted to the hearing officer.

10. On February 9, 1984, petitioners' attorney wrote the hearing officer stating that the Audit Division's position that the worksheets reflecting the computations of sales less bad debts were never presented was not true. He requested that a meeting be arranged between the Audit Division personnel and petitioners' accountant to resolve the bad debts matter. Such request was denied by the hearing officer.

CONCLUSIONS OF LAW

A. That based on Finding of Fact "6" supra, Issue "I" is moot.

B. That regulation section 20 NYCRR 525.5(c) regarding bad debts provides that where a receipt has been ascertained to be uncollectible, either in whole or in part, a vendor of tangible personal property or services may apply for a refund or credit of the tax paid on such receipt. That regulation section 20 NYCRR 525.5(c)(4) states:

"Procedure. The refund or credit shall be applied for with the quarterly return in which the account has been found to be worthless and has actually been charged off for federal income tax purposes. No credit or refund may be sought until such item has in fact been charged off." (Emphasis added).

That petitioners have failed to show that any bad debts deductions were taken for Federal income tax purposes for the period December 1, 1975 through November 30, 1978 and are therefore not entitled to any credit for bad debts for New York State sales tax purposes.

C. That the notices of determination and demand for payment of sales and use taxes due issued on April 10, 1980 are to be reduced first, in accordance with the stipulation entered into on October 4, 1983 (see Finding of Fact "6" supra), and second, by the payment made on November 2, 1983 in the amount of \$2,750.00 (see Finding of Fact "7" supra).

D. That the petitions of Dutchess Sanitation Service, Inc. and Joseph Fiorillo, Officer of Dutchess Sanitation Service, Inc. are granted to the extent indicated in Conclusions of Law "A" and "C" supra, and that, except as so granted, the notices of determination and demand issued on April 10, 1980 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York.

SEP 21 1984

STATE TAX COMMISSION

Rodwich W. Cline
PRESIDENT

Francis R. Kaemig
COMMISSIONER

Mark Tink
COMMISSIONER