

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
MAC DAVID FURNITURE, INC.
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,
1978 through August 31, 1981.

DECISION

Petitioner, Mac David Furniture, c/o David Siegel, 506 Beach 137th Street, Belle Harbor, New York 11694, 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, 1978 through August 31, 1981 (File No. 38906).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1985 at 9:15 A.M. Petitioner appeared by James Brogan, associated with the Office of Leo J. Carey, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioner's claimed non-taxable sales.

FINDINGS OF FACT

1. Petitioner herein, Mac David Furniture, Inc., filed New York State and Local Sales and Use Tax returns for the period December 1, 1978 through August 31, 1981. Gross sales reported on said returns totaled \$46,753.00 and reported taxable sales amounted to \$34,342.00.

2. On July 20, 1982, the Audit Division issued notices of determination and demand for payment of sales and use tax due (hereinafter "notices") to Mac David Furniture, Inc. and to David H. Siegel as a responsible officer of such corporation. Said notices, which encompassed the period December 1, 1978 through August 31, 1981, assessed additional sales tax due of \$1,044.12, plus simple interest of \$263.66, for a total amount due of \$1,307.78.

3. The tax due determined in the aforementioned notices was based on a field audit conducted by the Audit Division. Numerous requests were made of petitioner to make its books and records available for audit, however, no records were presented for examination. An auditor from the Audit Division's Brooklyn District Office visited petitioner's place of business and observed that petitioner was engaged in the retail sale of furniture; that business hours were limited; that there appeared to be no inventory; and that most sales were made on a direct order basis. Accordingly, it was decided to accept gross sales as reported by petitioner and limit the audit to verification of reported non-taxable sales of \$12,411.00. During the course of the audit, petitioner presented no documentation to support claimed non-taxable sales and, therefore, the Audit Division disallowed said non-taxable sales in total.

4. The Audit Division also determined that David H. Siegel was "...personally liable as officer of Mac David Furniture, Inc., under Sections 1131(1) and 1133 of the Tax Law...". Mr. Siegel was President of Mac David Furniture, Inc., and no argument or evidence was adduced at the hearing to show that he was not a person required to collect tax on behalf of Mac David Furniture, Inc.

5. At the hearing held herein petitioner submitted its general ledger in evidence to support claimed non-taxable out-of-state sales. Said general ledger contained a column headed "out of town" and it was alleged that the

sales recorded in this column were sales of furniture which were delivered outside New York State and, therefore, non-taxable transactions. The general ledger identified the customer's name but not his or her address. Other than the general ledger, no other documentary evidence was presented to substantiate out-of-state sales and deliveries.

CONCLUSIONS OF LAW

A. That regulation 20 NYCRR 527.1(a) provides, in part, that:

"The sales tax is imposed on the receipts from every retail sale of tangible personal property except... (6) [S]ale of tangible personal property delivered by the vendor to the purchaser or his designee outside of this State for use outside of this State."

Section 1132(c) of the Tax Law provides, in part, that:

"...it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five... are subject to tax until the contrary is established, and the burden of proving that any receipt... is not taxable hereunder shall be upon the person required to collect tax..."

B. That the limited evidence submitted by petitioner does not establish that claimed non-taxable sales constituted sales of tangible personal property delivered by petitioner to purchasers outside the State for use outside the State.

C. That the petition of Mac David Furniture, Inc., is denied and the notices dated July 20, 1982, are sustained, together with such additional interest as may be lawfully due and owing.

DATED: Albany, New York

JUL 10 1985

STATE TAX COMMISSION

Roderick W. Chen
PRESIDENT

Francis Q. Koening
COMMISSIONER

[Signature]
COMMISSIONER