

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	DECISION
	:	
TEE BAR CORPORATION	:	
	:	
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 June 1, 1979	:	
through November 30, 1981.	:	

Petitioner, Tee Bar Corporation, Highland, New York 12528, 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 June 1, 1979 through November 30, 1981 (File No. 39440).

A Small Claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 21, 1984 at 1:15 P.M., with all briefs to be submitted by August 1, 1984. Petitioner appeared by Issac Sternheim, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed certain nontaxable sales reported by petitioner.

FINDINGS OF FACT

1. Petitioner, Tee Bar Corporation, operated a ranch resort hotel located in Highland, New York.

2. On July 2, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period June 1, 1979 through November 30, 1981 for taxes due of \$12,904.29, plus interest of \$3,071.97, for a total of \$15,976.26.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period September 1, 1977 through February 28, 1979 to June 20, 1982. The statute of limitations expired for the period covered by the consents and, therefore, were not included on the notice.

4. On March 17, 1982, petitioner executed Form AU-377.12, Audit Method Election, whereby it elected to have the Audit Division use a test period audit method in lieu of a detailed audit of all the books and records. The periods selected as the test periods were June through August, 1979 and March through May, 1981.

5. On audit, the Audit Division reviewed sales invoices for all nontaxable transactions for the test periods. The nontaxable sales which were not covered by exemption certificates issued by the purchasers were disallowed. For the period June through August, 1979, the disallowed sales amounted to \$37,356.50 which represented 36.54 percent of total nontaxable sales. This percentage was applied to nontaxable sales reported for the period June 1, 1979 through May 31, 1980 to arrive at additional taxable sales of \$170,896.00. The disallowed sales for this period were sales to public schools located outside New York State except for one sale to "Miss Chocolate Co." for \$1,711.25.

The disallowed sales for the second test period (March through May, 1981) amounted to \$4,362.00 which consisted of sales to the following organizations:

Rhodes School	\$ 400.00
East Treemont Youth Program	\$2,867.00
Indian Princess	\$1,095.00

The above sales represented 2.381 percent of total nontaxable sales for the test period. This percentage was used to determine additional taxable sales of \$13,451.00 for the remainder of the audit period.

The audit also disclosed use taxes due of \$18,700.40 on expense purchases and fixed assets. Petitioner has agreed to and paid the use tax liability.

6. Petitioner argued that the public schools located outside New York State are governmental entities the same as New York State public schools which are exempt from the imposition of sales tax under the Tax Law and that a governmental entity is not required to issue an exempt organization certificate as evidence of exemption.

7. Petitioner submitted a resale certificate issued by Miss Chocolate Co., Inc. covering the sale indicated in Finding of Fact "5".

Petitioner also submitted a letter dated July 9, 1981 from the Technical Services Bureau of the Department of Taxation and Finance addressed to the Wanaque Board of Education, Wanaque, New Jersey. The letter stated that as a governmental entity, the Wanaque Board of Education is exempt from the payment of New York State sales and use taxes on its purchases. The letter further stated that a copy of the letter may be given to vendors who request a tax exemption number. Petitioner was furnished with a copy of the letter by the Wanaque Board of Education when it made a purchase amounting to \$7,838.00.

8. The disallowed sales were billed to and paid directly by the school or organization.

CONCLUSIONS OF LAW

A. That section 1116(a) of the Tax Law provides, in pertinent part, that any sale by or to any of the following or any use or occupancy shall not be subject to sales or use taxes:

"(1) The State of New York or any of its agencies, instrumentalities, public corporations or political subdivisions . . .

* * *

(4) Any corporation, association, trust...organized and operated exclusively for religious, charitable, scientific...or educational purposes..."

B. That section 1132(c) of the Tax Law specifically provides that "it shall be presumed that all receipts for property or services are subject to tax until the contrary is established and the burden of proving that any receipt... is not taxable shall be upon the person required to collect tax or the customer. Unless (1) a vendor shall have taken from the purchaser a certificate in such form as the tax commission may prescribe..., or (2) the purchaser, prior to taking delivery, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the tax commission may require demonstrating that the purchaser is an exempt organization described in section 1116, the sale shall be deemed a taxable sale at retail...".

C. Any organization other than (1) New York State (2) any of New York State's agencies, instrumentalities, public corporations (3) political subdivisions of New York State (4) the United States of America or (5) any of the agencies and instrumentalities of the United State of America must establish with the Technical Services Bureau its exempt status before it is entitled to exemption. The burden of proving that an organization is entitled to exemption rests with the organization [20 NYCRR 529.1(b)].

States of the United States and their agencies and their political subdivisions other than New York State and its agencies and political subdivisions do not qualify for exemption [20 NYCRR 529.1(c)].

Any organization claiming exemption from tax must furnish its vendor with documentation substantiating its right to the exemption claimed [20 NYCRR 529.1(d)].

D. That public schools located outside New York State are not exempt from sales and use taxes under section 1116(a)(1) of the Tax Law. In order for such schools to be considered exempt from the tax, they must file an application for an exempt organization certificate pursuant section 1116(a)(4) of the Tax Law and meet the statutory requirements for exemption.

E. That except for the documents indicated in Finding of Fact "5", the public schools or other organizations did not furnish petitioner with any evidence that they were exempt from sales and use taxes and therefore, petitioner was required to collect sales tax on the transactions in accordance with section 1132(c) of the Tax Law.

Petitioner is relieved of its liability for the tax assessed on the sales to the Wanaque Board of Education and Miss Chocolate Co., Inc. Accordingly, the disallowed sales for the test period June through August, 1979 are reduced to \$27,807.25.

F. That the petition of Tee Bar Corporation is granted to the extent indicated in Conclusion of Law "E". The Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use

Taxes Due issued July 2, 1982; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

APR 04 1985

STATE TAX COMMISSION

Roderick G. W. Cline
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. [Signature]
COMMISSIONER