

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THOM NORTON & CO.	:	DECISION
(Thomas Norton d/b/a Thom Norton & Co.)	:	
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, 1977	:	
through May 31, 1980.	:	

Petitioner, Thom Norton & Co. (Thomas Norton d/b/a Thom Norton & Co.), 100 Laurel Lake Road, Brackney, Pennsylvania 18812, 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, 1977 through May 31, 1980 (File No. 39478).

A small claims hearing was commenced before John Watson, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on June 28, 1984 at 3:00 P.M., and was continued to conclusion before Dennis M. Galliher, Hearing Officer, at the same offices on October 31, 1984 at 5:00 P.M., with all documents to be submitted by December 5, 1984. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether petitioner has substantiated the claim that sales tax was improperly assessed upon certain sales alleged to have been sales for resale and/or sales to organizations exempt from tax.

FINDINGS OF FACT

1. On July 20, 1981, following an audit, the Audit Division issued to petitioner, a sole proprietorship operated by Mr. Thomas Norton, a Notice of Determination and Demand For Payment of Sales and Use Taxes Due for the period June 1, 1977 through May 31, 1980 in the amount of \$4,450.82, plus interest.

2. The aforementioned assessment was premised upon the basis that petitioner could not produce resale certificates and/or exemption certificates in support of the claim that all sales made in New York State were sales for resale or were made to organizations not subject to tax.

3. At the June 28, 1984 hearing, petitioner presented six certificates (5 resale certificates and 1 exempt organization certificate) which were accepted by the Audit Division, in addition to those certificates presented at the time of audit, as supporting non-taxable sales to the organizations listed thereon, and the deficiency was accordingly reduced to \$3,136.43 of additional tax, plus interest. The recomputation worksheet specifies the \$3,136.43 of tax remaining at issue, the sales upon which such tax is computed and the fifteen individual purchasers (organizations) to whom the sales were made.¹

4. Petitioner sells bingo game supplies and equipment to various groups and organizations in New York State, and has been doing so since 1975. It was not until the end of the period at issue (in or about April 1980) that petitioner registered as a vendor in New York State. Prior thereto, petitioner had neither collected taxes nor filed sales tax returns in New York State.

¹ The purchaser organizations specified include 3 Elks Lodges, 5 Moose Lodges, an Eagles Lodge, a Knights of Columbus Hall, an Odd Fellows Lodge, an Italian American Club, an Owls Lodge, a Mohican Lodge, and an Order of Redmen, all located in New York State.

5. Petitioner maintains that the sales at issue were made to tax exempt organizations, specifically to organizations licensed to conduct bingo games, and that no tax is due. Petitioner also asserts that since he was not a registered vendor during the period at issue he was not responsible to collect and remit tax on the sales at issue.

6. Petitioner was afforded a period of time after the hearing, specifically until December 5, 1984, within which to submit resale and/or exempt organization certificates or affidavits of exemption from any or all of the fifteen organizations for which such certificates were not submitted. No additional items were submitted by petitioner.

CONCLUSIONS OF LAW

A. That Tax Law section 1101(b)(8)(i)(A) defines the term "vendor" to include, inter alia, "... (a) person making sales of tangible personal property or services, the receipts from which are taxed by... (Article 28 of the Tax Law)." Section 1131(1) of the Tax Law defines "(p)ersons required to collect tax" and "person required to collect any tax imposed by (Article 28 of the Tax Law)" to include every vendor of tangible personal property or services.

B. That Tax Law section 1116(a) sets forth the conditions under which certain organizations, specified therein, are afforded exemption from sales tax. General Municipal Law section 476.2 encompasses a broader group of organizations defined as "authorized organization(s)" which may be licensed to conduct bingo games. The aforesaid Tax Law section does not include, inter alia, fraternal organizations. Such organizations may be exempt for income tax purposes but not for sales tax purposes. Moreover, the test of organizational purpose under Tax Law section 1116(a) is that the organization must be "exclusively" organized for one or more of the enumerated exempt purposes. By

contrast, the test applied to organizations seeking authorization to conduct bingo games [General Municipal Law §476.4] requires only that one or more of the noted exempt purposes be a "dominant" purpose. Accordingly, it does not follow that sales to organizations licensed to conduct bingo games are, by definition, exempt from sales tax.

C. That it is presumed that all receipts from sales of tangible personal property or services are subject to tax, and petitioner bears the burden of proving the non-taxability of the receipts at issue [Tax Law section 1132(c)]. Petitioner, as a vendor (albeit unregistered until April of 1980), was thus responsible to either collect and remit tax on the sales at issue or, alternatively, prove that the receipts from such sales were not subject to tax.

D. That petitioner was unable to furnish exemption certificates (either resale certificates and/or exempt organization certificates) taken in good faith from the organizations to whom the sales at issue were made, the presentation of which would have satisfied petitioner's burden of proof (See NYCRR 532.4). Accordingly, petitioner has failed to support his burden of showing that the sales at issue were exempt either as sales for resale or were made to organizations exempt from sales taxes, and thus petitioner remains liable for the tax at issue.

E. That the petition of Thom Norton & Co. (Thomas Norton d/b/a Thom Norton & Co.) is hereby denied and the Notice of Determination dated July 20, 1981, as reduced in accordance with Finding of Fact "3", is sustained.

DATED: Albany, New York

APR 04 1985

STATE TAX COMMISSION

Rodriguez
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. [Signature]
COMMISSIONER