

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

L. E. PASCHALL :

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 Years 1976 through 1980. :

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Petitioner, L. E. Paschall, 14 Jefferson Street, Copiague, New York 11727, 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 years 1976 through 1980 (File No. 40527).

A hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 6, 1985 at 10:45 A.M. Petitioner appeared by Siben & Siben, Esqs. (William A. Whitman, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

#### ISSUE

Whether payments made by a third party on petitioner's outstanding sales tax liability were properly credited to petitioner's account.

#### FINDINGS OF FACT

1. Petitioner, L. E. Paschall, had originally owned a delicatessen business. On an unspecified date in the mid-1970's, petitioner sold this business to Mr. and Mrs. Edward Lawrence, Jr. As part of the sales agreement, Mr. and Mrs. Lawrence agreed to pay to the Department of Taxation and Finance petitioner's outstanding sales tax liability. From February, 1976 through December, 1980, Mr. and Mrs. Lawrence sent checks, usually in the amount of

\$206.80, to the Department. The checks were generally marked either "payment for L. E. Paschall" or with assessment number 90,778,023P.

2. On April 13, 1981, the Audit Division issued a refund to petitioner of \$599.23 plus interest. On July 20, 1981, the Audit Division issued a second refund to petitioner in the amount of \$138.49 plus interest. The refunds were based on a determination that petitioner had five sales tax assessments outstanding totalling \$8,637.10, less payments from petitioner of \$276.23, for an outstanding balance of \$8,360.87. Credit was given for payments from Mr. and Mrs. Lawrence totalling \$9,098.59 resulting in an overpayment of \$737.72, which amount constituted the aforesaid refunds.

3. At the hearing, petitioner produced 55 cancelled checks drawn by Mr. and Mrs. Lawrence to the order of the Department. Fifty-four of the checks were drawn in the amount of \$206.80 and one was drawn in the amount of \$203.80 for a total of \$11,371.00. The Audit Division would not give full credit for the 55 checks because the deposit numbers, stamped by the Division, were not legible on some of the checks. The Audit Division's position is that some of these checks may have been applied to old assessments other than the five assessments mentioned supra. A check of the Department's records revealed no other sales tax assessments against petitioner other than those five. Petitioner maintains that he is entitled to an additional refund giving him credit for the total payments made on his behalf by Mr. and Mrs. Lawrence.

#### CONCLUSIONS OF LAW

A. That the checks produced by petitioner indicate that \$11,371.00 was paid on petitioner's behalf by Mr. and Mrs. Lawrence. The Audit Division had records of five assessments originally outstanding against petitioner totalling \$8,637.10. There is no indication in any Department records of any additional

sales tax assessments. Petitioner is thus entitled to a refund determined as follows:

Total assessments	\$ 8,637.10
Less amount received from petitioner	- 276.23
Total outstanding	<u>\$ 8,360.87</u>
 Total received from Mr. and Mrs. Lawrence	 \$11,371.00
Less total outstanding	- 8,360.87
Overpayment	<u>\$ 3,010.13</u>
Less prior refunds	737.72
Additional refund	<u><u>\$ 2,272.41</u></u>

B. That the petition of L. E. Paschall is granted to the extent that the Audit Division is directed to refund the sum of \$2,272.41, together with such interest as may be lawfully owing; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985

*Roderick W. Allen*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. [Signature]*  
COMMISSIONER