

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of :

BON-TON OF SYRACUSE, INC.
formerly DONNOR SALES, INC. :

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 Period September 1, 1979 :
through May 31, 1982. :

Petitioner, Bon-Ton of Syracuse, Inc., formerly Donnor Sales, Inc., 448 Burnet Avenue, Syracuse, New York 13203, 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 September 1, 1979 through May 31, 1982 (File No. 41059).

A small claims hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on February 3, 1984 at 11:15 A.M., with all documents to be filed on or before February 17, 1984. Petitioner appeared by Mr. Donald Connor, president. The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether petitioner is liable for additional sales and use taxes as a result of a field audit.

FINDINGS OF FACT

1. On December 7, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Donnor Sales, Inc. The Notice assessed a total tax due of \$15,755.25 for the period September 1, 1979

through May 31, 1982, plus interest of \$3,032.48, for a total amount due of \$18,787.13. The Notice explained, in part, that the tax was determined in accordance with section 1138 of the Tax Law and was based on an audit of petitioner's records.

2. At the time the Notice was issued, the Audit Division had not been advised by the Department of State that the name Donnor Sales, Inc. had been changed to Bon-Ton of Syracuse, Inc.

3. In the course of the audit, the auditor reviewed petitioner's purchase records in detail and concluded that use tax was due on three items. First, the auditor found that use tax of \$738.36 was due on recurring purchases from suppliers. Second, the auditor determined that use of \$715.12 tax was due on petitioner's purchase of furniture and fixtures. Lastly, the auditor concluded that use tax in the amount of \$12,615.61 was due on petitioner's purchase of materials which were incorporated into capital construction.

4. The auditor also determined that sales tax was due in the amount of \$1,686.16 upon a finding of unsubstantiated exempt sales. One portion of the sales tax alleged to be due was found through the use of an error rate derived through an examination of sales invoices for the period December 1, 1981 through May 31, 1982.

5. After the audit was completed, Mr. Connor, on behalf of Donnor Sales, Inc., executed a document consenting to the utilization of a representative test period audit method.

6. On September 1, 1979, Mr. Donald Connor purchased the assets of a business known as Bon-Ton of Syracuse, Inc. ("Bon-Ton"). At the time of the purchase, the former owners of Bon-Ton would not sell the business name. Therefore, Mr. Connor used the name of Donnor Sales, Inc. On December 11,

1979, Mr. Connor acquired the use of the name of Bon-Ton and, on this date, petitioner's name was changed back to Bon-Ton.

7. Bon-Ton engaged in the installation and fabrication of glass and aluminum. This involved replacing glass in automobiles and buildings and fabricating the glass and aluminum used in the erection of new buildings or new additions to buildings.

8. In the course of conversations with employees of the Audit Division, Mr. Connor was advised that he should attempt to recover previously uncollected taxes from his customers. When Mr. Connor followed this advice, he lost four preferred customers.

9. At the hearing, Mr. Connor stated that he did not challenge the accuracy of the assessment issued to Bon-Ton.¹

10. At the hearing, petitioner argued, among other things, that: correct information regarding those transactions upon which he should be collecting sales tax was unavailable; that the publications of the Department of Taxation and Finance were either misleading or erroneous; that one should not have to consult reference materials to determine one's sales tax liability; that his right to accurate information under the Freedom of Information Act was denied; and that his attempts, through telephone communications with employees of the Department of Taxation and Finance, to obtain guidance as to which transactions were taxable were unavailing.

¹ Mr. Connor did argue briefly that he should not have been assessed tax on the purchase of drill bits which were used in the production of an "electronic finger". However, when asked if he wished to submit documents substantiating this argument, he stated that he did not wish to pursue the point.

CONCLUSIONS OF LAW


A. That petitioner has not submitted any evidence which would establish that he is not liable for the sales and use taxes assessed. Moreover, petitioner's arguments do not provide any basis for cancelling the tax assessed. That is, the difficulty which petitioner experienced in obtaining information is not a basis warranting cancellation of the assessment.

B. That the petition of Bon-Ton of Syracuse, Inc. formerly Donnor Sales, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 7, 1982 is sustained.


DATED: Albany, New York

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STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER