

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

HUNTS POINT PALACE, 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 June 1, 1979
through May 31, 1982. :

Petitioner, Hunts Point Palace, Inc., 953 Southern Boulevard, Bronx, New York 10459, 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 May 31, 1982 (File No. 41658).

A 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 March 21, 1986 at 9:00 A.M. Petitioner appeared by its President, Melvin Stier. The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUE

Whether the charge for the rental of a room for a place of assembly is subject to tax when such charge is in connection with the sale of food.

FINDINGS OF FACT

1. Petitioner, Hunts Point Palace, Inc., was engaged in the rental of banquet rooms for such functions as weddings, parties and meetings. For certain of these functions, usually weddings, petitioner provided food.

2. On December 20, 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 May 31, 1982 for taxes due of \$774.60, plus interest of \$183.92, for a total of \$958.52.

3. Melvin Stier, on behalf of petitioner, executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1979 through November 30, 1979 to December 20, 1982.

4. On audit, the Audit Division examined petitioner's sales contracts for the entire audit period. Some contracts provided for the rental of a room alone, while others had an additional, separately-stated charge for food or beverages. Petitioner collected sales tax only on the charge for food and beverages. The Audit Division determined that in those instances where petitioner furnished food or beverages, it was acting as a caterer and the total charge to the customer, including the room rental, was subject to tax. The additional taxable sales amounted to \$9,640.00 with tax due thereon of \$774.60.

5. Petitioner had no kitchen facility on the premises for preparing food. If petitioner was required under a contract to supply food for an affair, the food was ordered from an outside caterer and delivered directly to the room rented by the customer. Petitioner did not furnish personnel for serving food or drinks. The customer was responsible for service, decorations and equipment, other than tables and chairs.

CONCLUSIONS OF LAW

A. That section 1105(d)(i) of the Tax Law imposes a tax upon:

"The receipts from every sale of...food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments...or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers."

Subdivision (1) of said section further provides, "in all instances where the sale is for consumption on the premises where sold."


B. That the sales contracts at issue herein provided for both the rental of a room and for either the sale of food alone or for food and drink to be consumed on petitioner's premises. The charge for the rental of the room was an "other charge" to the customer in conjunction with the sale of food and drink and thus became part of the receipts subject to the tax imposed under section 1105(d)(i) of the Tax Law.

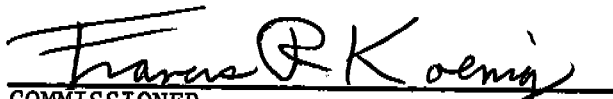
C. That the petition of Hunts Point Palace, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER