

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IDA AMORE	:	DECISION
D/B/A SOMETHING SPECIAL	:	
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 22,	:	
1980.	:	

Petitioner, Ida Amore, d/b/a Something Special, 604 Forest Avenue, Staten Island, New York 10310, 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 ending September 22, 1980 (File No. 42595).

A formal hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 10, 1985 at 9:00 A.M., with all briefs to be submitted by June 10, 1985. Petitioner appeared by Russo, Fusco, Scano, Scamardella & Frederick, P.C. (Michael M. Walsh, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the sale of a lease constituted a bulk sale pursuant to section 1141(c) of the Tax Law, thus subjecting the buyer to liability for sales taxes due to the State from the seller.

FINDINGS OF FACT

1. Denim & Things, Inc. operated a retail men's clothing store at 604 Forest Avenue, Staten Island, New York until September, 1980.

2. On September 22, 1980, Ida Amore, d/b/a Something Special, purchased from Denim & Things, Inc. the right to assume the lease of the premises previously occupied by the latter. The sales price was \$3,600.00.

3. A Notification of Sale, Transfer or Assignment in Bulk, dated January 5, 1982, was received by the Audit Division on January 11, 1982, indicating a sale of the subject lease and goodwill for a total sales price of \$3,600.00. It appears that the notice had been prepared by a tax compliance agent.

4. On April 9, 1982, the Audit Division issued to Ida Amore, d/b/a Something Special, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$3,600.00 for the period ending September 22, 1980. The Notice asserted the petitioner's liability as a purchaser for taxes determined to be due the State from Denim & Things, Inc. In accordance with section 1141(c) of the Tax Law, the purchaser's liability was limited to the purchase price of the leasehold.

5. The only asset purchased by petitioner from Denim & Things, Inc. was the subject lease.

6. Petitioner's son testified that a portion of the purchase price had been placed in an escrow account, and this money was released to the seller upon an order of the Civil Court of The City of New York, Richmond County. The details of that law suit were not offered into evidence.

CONCLUSIONS OF LAW

A. That a leasehold is a business asset and its sale constitutes a bulk sale within the meaning and intent of section 1141(c) of the Tax Law.

B. That petitioner failed to give to the State Tax Commission timely and proper notice of the sale and is therefore liable for taxes determined to be due from the seller not to exceed the purchase price of the assets sold.

C. That the petition of Ida Amore d/b/a Something Special is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 9, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985


PRESIDENT


COMMISSIONER


COMMISSIONER