

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CORDEIRO'S OLD RIDGE INN, 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,	:	
1980 through September 28, 1983.	:	

Petitioner, Cordeiro's Old Ridge Inn, Inc., 2454 Ridge Road East, Ontario, New York 14519, 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, 1980 through September 28, 1983 (File No. 50712).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on January 30, 1986 at 10:45 A.M., with additional evidence to be submitted by February 13, 1986. Petitioner appeared by Michael Villeneuve, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division's assertion of additional sales tax due from petitioner, which assertion was premised upon a bulk sale transfer of certain baseball field lights, was proper.

FINDINGS OF FACT

1. On December 19, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner, Cordeiro's

Old Ridge Inn, Inc., for the period September 1, 1980 through September 28, 1983 asserting total sales tax due of \$15,549.97, plus penalty and interest. The notice indicated that bulk sales tax of \$4,550.00 was included in the total sales tax asserted due from petitioner.

2. On October 9, 1984, the Audit Division issued to petitioner a Notice of Assessment Review which adjusted the tax asserted due in the aforementioned Notice of Determination and asserted \$4,550.00 in tax due from petitioner, plus penalty and interest.

3. The adjusted tax asserted due by the Audit Division was premised upon the Audit Division's contention that petitioner had sold in bulk certain furniture and fixtures used in petitioner's business to Jerry's Ontario Old Ridge Inn, Inc. The Audit Division contended that the sales price of the assets sold was \$65,000.00, and calculated the bulk sales tax asserted due accordingly. The \$65,000.00 sales price for the furniture and fixtures sold was determined from a Notification of Sale, Transfer or Assignment in Bulk, dated September 14, 1983, which was filed with respect to the aforementioned bulk sales transaction by the purchaser in the transaction and which listed \$65,000.00 as the sales price of "Furniture, Fixtures, Etc."

4. On October 15, 1984, the bulk sale purchaser, Jerry's Ontario Old Ridge Inn, Inc., remitted \$3,500.00 in payment of the tax asserted due by the Audit Division. Said purchaser also submitted an amended Notification of Sale, Transfer or Assignment in Bulk which listed \$50,000.00 as the sales price of "Furniture, Fixtures, Etc.", in the bulk sale at issue. Petitioner contended that the amended notification correctly listed the sales price of the assets in question and that the original notification had incorrectly listed \$65,000.00 as the sales price of said assets.

5. Both the September 14, 1983 notification and the amended notification listed petitioner as the seller in the bulk sale. Both notifications listed September 28, 1983 as the scheduled date of sale.

6. As a result of the aforementioned payment, the amount of tax which remains at issue herein is \$1,050.00. The sole asset upon which the Audit Division maintains that bulk sales tax has not been paid is a set of baseball field lights which were transferred to the purchaser in the bulk sale. Petitioner contended that these lights were included in the \$50,000.00 selling price - of furniture and fixtures as listed on the amended sale notification and upon which sales tax had been paid.

7. With respect to the bulk sale transaction, an Agreement of Sale was entered into on July 8, 1983 by and between Jerry's Ontario Old Ridge Inn, Inc., as buyer, and petitioner and Cordeiro's Field, Inc., as sellers. The agreement provided for a total purchase price of \$210,000.00 for the sale of approximately 12.36 acres of land improved by a single family dwelling, a tavern-restaurant-partyhouse, a trailer, a baseball field, lighting for the baseball field, and furniture, equipment and furnishings.

8. On July 25, 1983, the aforementioned parties executed an Addendum to Agreement of Sale which allocated the total purchase price to the land, buildings and other property involved in the sale. Insofar as said allocation is relevant herein, the addendum allocated \$50,000.00 of the purchase price to "Equipment and furnishings" and \$15,000.00 to "Land improvements (lighting)".

9. The Federal income tax return of Cordeiro's Field, Inc. for its fiscal year ended July 31, 1982 listed "ballfield lights" as a depreciable asset on its depreciation schedule. Said schedule further indicated that the lights were acquired in August, 1979 at a cost of \$6,000.00 and that Cordeiro's Field,

Inc. claimed \$600.00 of depreciation on the lights for its fiscal year ended July 31, 1982.

10. At the time of the bulk sale, George Cordeiro owned 100 percent of the common stock of both petitioner and Cordeiro's Field, Inc. Mr. Cordeiro was also president of each corporation.

11. At the time of the sale, the baseball field lights referred to herein were owned by Cordeiro's Field, Inc. The lights were sold in the bulk sale by Cordeiro's Field, Inc., to Jerry's Ontario Old Ridge Inn, Inc. Although it owned the lights at the time of sale, Cordiero's Field, Inc. did not file a Notification of Sale, Transfer or Assignment in Bulk with respect to the sale of such lights; nor did the purchaser file any such notification with respect to the sale.

12. At hearing, the Audit Division conceded that petitioner had shown reasonable cause for abatement of the penalty asserted by the Audit Division with respect to the amount of the tax at issue herein.

CONCLUSIONS OF LAW

A. That inasmuch as petitioner did not own the baseball field lights in question at the time of sale, which lights are the only asset which remains at issue herein, petitioner did not sell, transfer or assign the lights within the meaning of section 1141(c) of the Tax Law. The Audit Division therefore improperly asserted tax due from petitioner with respect to the transfer of this asset.

B. That the petition of Cordeiro's Old Ridge Inn, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 19, 1983, as revised, is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

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Rodriguez W. Chen
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Jell
COMMISSIONER