

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LEVITTOWN EVENTS, INC.,	:	DECISION
D/B/A UNCLE SAMS	:	
	:	
for a Hearing with Regard to a Bond Required to	:	
be filed under Section 1137(e)(2) of Article 28	:	
of the Tax Law.	:	

Petitioner, Levittown Events, Inc., d/b/a Uncle Sams, 2965 Hempstead Turnpike, Levittown, New York 11756, filed a petition for a hearing with regard to a bond required to be filed under section 1137(e)(2) of Article 28 of the Tax Law (File No. 54647).

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 February 7, 1985 at 11:15 A.M. Petitioner appeared by Michael T. Broadwell, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division properly required petitioner to file a surety bond pursuant to section 1137(e)(2) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Levittown Events, Inc., d/b/a Uncle Sams, owns and operates a nightclub in Levittown, New York. Petitioner's president and chief stockholder, Nicholas Paccione, together with some smaller investors, purchased the business from a Cincinnati, Ohio corporation on December 15, 1982 for \$1,000,000.00. Mr. Paccione and his brothers were able to raise \$325,000.00 and executed a

long-term note and purchase money mortgage for the remainder of the purchase price, payable to the seller.

2. The first year petitioner was in business it had gross sales of approximately \$2,100,000.00. During the first five months of its operation, petitioner's sales tax payments were timely. Sometime during 1983, however, the business had unexpected expenses totalling \$200,000.00 and payments to all its creditors fell behind. Petitioner's sales tax payments were consistently two to three months late. In May, 1983, the Audit Division advised petitioner that, due to its large amount of sales, it was required to file monthly sales tax returns. Petitioner continued to be two to three months late in its payments until August, 1984 when it was able to reduce its late payment time to one month. Petitioner continued to pay its sales tax one month late as of the date of the hearing. Petitioner filed the majority of its returns in a timely fashion. It failed to make full payment with each return, however, either making partial payment or no payment with each return.

3. By letter dated July 20, 1984, the Audit Division notified petitioner that, pursuant to sections 1137(e)(2) and 1252(a) of the Tax Law, petitioner was required to file a bond in the amount of \$50,000.00 to secure the payment of any sales or use taxes or penalties or interest due or which might become due. Petitioner immediately filed a petition for a hearing to contest the imposition of the bond requirement.

4. The Audit Division based its decision to require a bond on petitioner's continued history of late payments. Mr. Paccione explained that the unexpected expenses which occurred during the first few months of petitioner's operation of the business caused petitioner to fall behind on its payments to all its creditors and that petitioner was not using sales tax money to finance the

operation. No dividends have yet been paid to petitioner's shareholders. Petitioner makes monthly payments of \$17,276.40 on the purchase money mortgage securing the loan on the business. The final payment on the mortgage will be due on July 1, 1985 and Mr. Paccione believes that once this money becomes available each month, petitioner will be able to become current on its monthly tax payments. As of the hearing, petitioner had become current on its outstanding assessments, including penalties and interest.

5. Petitioner submitted its most recent uncertified financial statements to show that its financial position was sound. The statements revealed that as of November 30, 1984, petitioner had current assets of \$71,226.08 and current liabilities of \$231,424.00. Its total assets were \$532,280.25 and total liabilities were \$362,186.22, for a net worth of \$170,094.03. Petitioner's gross sales for the 11 month period ended November 30, 1984 were \$1,740,251.84. Its total operating expenses were \$608,612.70 resulting in an operating profit of \$790,969.43. Petitioner's net income after subtracting general and administrative expenses was \$25,146.79. Petitioner's sales tax assessments have averaged \$35,000.00 to \$45,000.00 per quarter during the period in which it has been in business.

CONCLUSIONS OF LAW

A. That section 1137(e)(2) of the Tax Law provides, in part, that:

"Where the tax commission, in its discretion, deems it necessary to protect the revenues to be obtained under this article, it may require any person required to collect the tax imposed by this article to file with it a bond, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as the tax commission may fix, to secure the payment of any tax or penalties or interest due or which may become due from such person under this article."

B. That 20 NYCRR 533.4(c)(1)(ii) provides:

"The filing of a bond may be required from a person required to collect tax where:

- (a) he has been delinquent in the filing of returns or in the payment of the tax;
 - (b) he has filed improper returns;
 - (c) he maintains no records or maintains records which are inadequate or incomplete;
 - (d) he does not charge the tax in accordance with the Tax Law;
- or
- (e) under such other circumstances wherever the State Tax Commission deems such action necessary to protect the tax revenues to be obtained."

C. That although petitioner's net worth indicates it is in reasonably good financial condition, its current liabilities far exceed its current assets and its annual net income for 1984 was not enough to cover one quarter's sales tax. Most importantly, however, petitioner's payment record since March, 1984 has been extremely poor. Since that date, only one monthly return has been filed and paid in a timely manner. Under the circumstances, the Audit Division was warranted in requiring petitioner to file a bond in order to protect the tax revenues.

D. That with respect to the amount of the bond, inasmuch as petitioner's quarterly sales tax liability averages between \$35,000.00 and \$45,000.00, a bond in the amount of \$50,000.00 which would cover one quarter's tax is reasonable. It should be noted that 20 NYCRR 533.4(c)(1)(iv) provides, in part, that the bond will be cancelled "whenever the vendor demonstrates to the satisfaction of the Tax Commission that a bond is not necessary to secure the payment of any tax, penalties or interest due, or which may become due from such vendor...". If petitioner's payment history and financial condition improves following final payment on the purchase money mortgage in July, 1985, as petitioner's president believes it will, petitioner may reapply for cancellation of the bond

requirement. Until such time, however, a bond in the amount of \$50,000.00 will be required.

E. That the petition of Levittown Events, Inc. d/b/a Uncle Sams is denied and the requirement of a surety bond in the amount of \$50,000.00 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985

Rodica Arlen
PRESIDENT

Francis R. Koenig
COMMISSIONER

W. A. [unclear]
COMMISSIONER