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STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

JEREBEL STABLES, 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, 1982 :  
through November 30, 1982.

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Petitioner, Jerebel Stables, Inc., c/o Jerry Dubiner, 130 Jackson Avenue, Pelham Manor, New York 10803, 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, 1982 through November **30**, 1982 (File No. 63722).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, **Two** World Trade Center, New York, New York, on December 3, 1986 at 9:45A.M. Petitioner appeared by Carl A. D'Angelo, Esq. The Audit Division appeared by John P. Duqan, Esq. (Mark F. Volk, **Esq.**, of counsel).

#### ISSUES

I. Whether the Audit Division properly imposed tax on petitioner's purchase and subsequent use within the State of New York of two standardbred racehorses.

II. If **so**, whether penalty imposed by the Audit Division for late payment of the tax should be cancelled.

#### FINDINGS OF FACT

1. On May 2, 1984, the Audit Division issued to petitioner, Jerebel Stables, Inc., Form AU-181, New York State and Local Sales and Use Tax - Report

of Casual Sale, requesting payment of tax on petitioner's purchase of the standardbred racehorse Johnny MacFaber. Also, on May 14, 1984, the Audit Division sent Form AU-181 to petitioner for the same purpose regarding the standardbred racehorse Storm Lord.

2. On October 22, 1984, the Audit Division sent petitioner a Statement of Proposed Audit Adjustment wherein it requested payment of tax in the amount of \$4,125.00, plus penalty and interest, on the purchase of Storm Lord. On October 26, 1984, a Statement of Proposed Audit Adjustment was sent to petitioner requesting payment of tax in the amount of \$350.00, plus penalty and interest, on its purchase of Johnny MacFaber. The tax due was computed on the purchase price of the horses.

3. On June 21, 1985, the Audit Division issued to petitioner a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing a tax due of \$4,475.00, plus penalty of \$1,118.75 and interest of \$1,734.83, for a total amount due of \$7,328.58 for the period June 1, 1982 through November 30, 1982. The notice contained the following explanation:

"Since you did not file a 'Report of Casual Sale' as required under section 1133 of the Tax Law, and did not respond to our correspondence regarding your purchase or use of the above named race horse(s), the following taxes are determined to be due in accordance with the provisions of section 1138 of the Tax Law."

4. On September 11, 1985, Jerebel Stables, Inc. timely filed a petition for a hearing to review the notice. Petitioner does not contest the fact that it is liable for tax on the purchase, but rather maintains that the appropriate tax was paid to the seller at the time of sale.

5. Petitioner conducts racing activities at harness tracks in the New York City - Northern New Jersey area. Petitioner's offices are located at 130

Jackson Avenue, Pelham Manor, New York. Mr. Jerry Dubiner is petitioner's sole officer and shareholder.

6. In June 1982, petitioner purchased Storm Lord and Johnny MacFaber from the Fourteen Karat Stable in one transaction for approximately \$60,000.00. At the time of purchase, the horses were located at the Meadowlands Raceway in East Rutherford, New Jersey. The horses were used in petitioner's racing activities.

7. At the hearing Mr. Dubiner testified that the purchase price included the appropriate tax, however, he was unable to locate either the cancelled check or receipt which presumably would support his testimony. Notwithstanding Mr. Dubiner's testimony, petitioner was unable to present any other evidence that the tax was paid.

8. Mr. Dubiner believed that the tax was paid and did not intentionally avoid paying the tax.

#### CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law imposes a tax "for the use within this state... of any tangible personal property purchased at retail" unless the property has already been subject to the sales tax.

B. That since the petitioner has failed to show that tax was paid at the time of purchase as contended, the Audit Division properly imposed the tax against petitioner.

C. That petitioner's failure to pay the tax in a timely manner was due to reasonable cause and not due to willful neglect. Therefore, the penalty is hereby cancelled.


D. That the petition of Jerebel Stables, Inc. is granted to the extent indicated in Conclusion of Law "C"; the Audit Division is hereby directed to

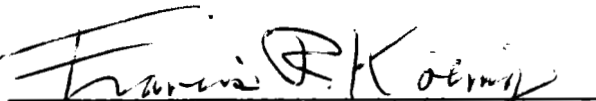
modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 21, 1985; and that except as so granted, the petition is denied.

DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT

  
COMMISSIONER

  
COMMISSIONER