

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Drutman Furniture Corp. :  
Julius Drutman & Ralph Drutman, Indiv. & as Officers :  
: AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the Period :  
6/1/71 - 5/31/74. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of September, 1981, he served the within notice of Decision by certified mail upon Drutman Furniture Corp., Julius Drutman & Ralph Drutman, Indiv. & as Officers the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Drutman Furniture Corp.  
Julius Drutman & Ralph Drutman, Indiv. & as Officers  
2436 Grand Concourse  
Bronx, NY 10458

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
25th day of September, 1981.

*Annice A. Hapellund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Drutman Furniture Corp. :  
Julius Drutman & Ralph Drutman, Indiv. & as Officers :  
: AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision  
of a Determination or a Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the  
Period 6/1/71 - 5/31/74. :

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State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of September, 1981, he served the within notice of Decision by certified mail upon Mortimer D. Haut the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mortimer D. Haut  
500 Fifth Ave.  
New York, NY

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
25th day of September, 1981.

*Carrie D. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

September 25, 1981

Drutman Furniture Corp.  
Julius Drutman & Ralph Drutman, Indiv. & as Officers  
2436 Grand Concourse  
Bronx, NY 10458

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Mortimer D. Haut  
500 Fifth Ave.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
DRUTMAN FURNITURE CORP.,	:	
JULIUS DRUTMAN and RALPH DRUTMAN	:	DECISION
Individually and as Officers	:	
	:	
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, 1971 through May 31, 1974.	:	

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Petitioners, Drutman Furniture Corp., 2436 Grand Concourse, Bronx, New York, Julius Drutman, 1115 Warburton Avenue, Yonkers, New York, and Ralph Drutman, 4 Oakwood Terrace, Spring Valley, New York, 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, 1971 through May 31, 1974 (File No. 11369).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 7, 1977 at 10:45 A.M. and continued on February 17, 1978 at 9:15 A.M. Petitioners appeared by Mortimer D. Haut, CPA. The Audit Division appeared by Peter Crotty, Esq. (Alfred Rubinstein and James J. Morris, Esqs., of counsel).

#### ISSUE

Whether the Audit Division's determination of additional sales taxes due, based on an audit of petitioner's books and records, was correct.

#### FINDINGS OF FACT

1. During the period under review, petitioner Drutman Furniture Corp. sold household furnishings at retail from a storefront at 2436 Grand Concourse,

Bronx, New York. Another store that offered the same line of merchandise was maintained by the petitioner Drutman Furniture Corp. in Paramus, New Jersey. The petitioners Julius Drutman and Ralph Drutman were the principal officers in Drutman Furniture Corp.

2. On November 10, 1975, 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 the petitioners Drutman Furniture Corp., Julius Drutman and Ralph Drutman, individually and as officers, for \$52,913.27, plus penalty and interest of \$22,170.63, for a total of \$70,083.90 for the period of June 1, 1971 through May 31, 1974. The notice was timely issued pursuant to a signed consent extending the period of limitation for assessment of sales and use taxes for the period at issue to December 19, 1975.

3. Petitioners made timely application for a hearing to review the aforesaid notice of tax due.

4. On audit, the auditor for the Audit Division examined the cash receipts journal, the cash disbursements journal, the Federal income tax returns for the years 1971, 1972 and 1973, the sales invoices, and the purchase invoices as retained by petitioner Drutman Furniture Corp. Using these records, the auditor performed a purchase markup audit. A markup of 102.6 percent was determined by comparing the sales price of 52 items as shown on sales invoices to their cost as shown on purchase invoices. This percentage was applied to an adjusted purchase figure for the New York store of \$896,562.00, and an adjusted gross sales figure of \$1,775,914.61 was determined. The auditor then tested petitioner's claimed non-taxable sales from the New York Store for the period December 1, 1973 through May 31, 1974. A 36.75 percent disallowance was computed. This resulted in an acceptable non-taxable sales figure for the

audit period of \$46,906.52 that was deducted from the adjusted gross sales. Credit was given for the taxable sales reported on petitioner's sales and use tax returns. The result was additional taxable sales of \$755,904.09 and an additional tax due of \$52,913.27, exclusive of penalty and interest.

5. Petitioner maintained that its non-taxable sales varied greatly from period to period, and the one period that the state tested contained the greatest amount of non-taxable transactions. In connection with the determination of the percentage of disallowance of claimed non-taxable sales, the state disallowed three sales of furniture as described in Findings of Fact "6", "7" and "8".

6. (a) On or about April 19, 1974, petitioner Drutman Furniture Corp. received an order for the purchase of furniture for the total purchase price of \$3,247.00 from Mr. and Mrs. F. Nardi, whose address was stated in said order to be "95 Rocklodge Rd., Bronxville, Yonkers".

(b) Said order was accompanied by a Resale Certificate dated April 24, 1974, signed by Fred Nardi as vice-president of Nardi, Inc., and bearing the stated address "2558 Paulding Ave., Bronx, N.Y.".

(c) The aforesaid purchasers informed petitioner Julius Drutman that they conducted two businesses, one of which was a boutique, and that the furniture ordered as aforesaid was intended for said boutique.

(d) The furniture so ordered was delivered by petitioner Drutman Furniture Corp. to the home of Mr. and Mrs. F. Nardi located (at the time of said delivery) in Bronxville, New York.

7. (a) During 1974, petitioner Drutman Furniture Corp. received an order for the purchase of furniture to be delivered to Chester, Pennsylvania, for the

total purchase price of \$439.85, on which basis petitioner claimed that the sale of said furniture was not subject to sales tax.

(b) The state determined that the purchase of furniture was subject to the sales tax, on the grounds that petitioners failed to submit evidence that delivery of said furniture took place in Pennsylvania.

8. (a) During the period at issue, petitioner Drutman Furniture Corp. received an order for the purchase of furniture to be delivered to an alleged delegate to the United Nations. It was delivered for the total purchase price of approximately \$300.00, on which basis petitioners claim that the sale of said furniture was not subject to the sales tax.

(b) There is no evidence in the record to establish the fact that the purchaser of said furniture was a delegate to the United Nations.

9. Petitioners further claimed the records it maintained were accurate and correct. It argued that the state failed to give consideration to items such as orders for the purchase of furniture which were cancelled by the purchasers prior to delivery thereof, theft, pilferage, and reduced sales prices for floor samples.

10. Petitioner Drutman Furniture Corp's. Federal income tax during the period at issue reflected an 81.7 percent markup as compared to the markup computed by the state on audit of 102.6 percent.

11. Petitioner maintained sufficient books and records for the state to determine the exact amount of tax due.

12. Petitioner did not establish that reasonable cause exists for the abatement of penalty and interest.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain the burden of proof with respect to the claims of nontaxability of the sales of furniture set forth in Findings of Fact "6", "7" and "8".

B. That although section 1132(c) of the Tax Law provides, in part, that the "vendor shall not be required to collect tax from purchasers who furnish a certificate of resale or an exempt organization statement in proper form," it appears from the face of the aforesaid order of Mr. & Mrs. F. Nardi, dated April 19, 1974, and from the face of the aforesaid Resale Certificate, dated April 24, 1974, that said order was given by individuals, while the Resale Certificate was signed on behalf of a corporate entity; therefore, petitioners should not have accepted the Resale Certificate and should have collected the appropriate sales tax from the individual purchasers.

C. That petitioners were required to collect tax based on the sale of merchandise to an alleged delegate to the United Nations, since they failed to sustain the burden of proving that the purchaser was, in fact, a delegate to the United Nations.

D. That petitioners were properly charged with liability for the collection of the tax based on the sale of merchandise to a customer in Chester, Pennsylvania, since they have failed to sustain the burden of proving that an out-of-state delivery was, in fact, made.

E. That although there is statutory authority for use of a test period to determine the amount of tax due, resort to such method of computing tax liability must be founded upon an insufficiency of record keeping which makes it virtually impossible to verify such liability and conduct a complete audit. (Chartair, Inc. v. State Tax Commission, 65 AD2d 44, 411 NYS2d 41.)



F. That petitioner Drutman Furniture Corp. maintained adequate books and records from which the actual amount of tax due could have been determined. Therefore, the tax due is reduced to the amounts that were found due on the disallowed non-taxable sales in accordance with Conclusions of Law A, B, C and D above.

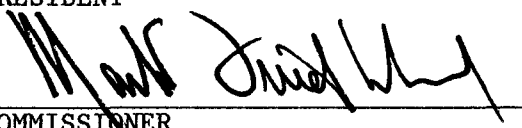
G. That the petition of petitioners Drutman Furniture Corp., Julius Drutman and Ralph Drutman is granted to the extent provided herein, that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 10, 1975; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER