

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

B.E.S. CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use Taxes :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the Year(s) or Period(s) :  
September 1, 1965 through November 30, 1971.

State of New York  
County of Albany

MARYLOU SAMUELS, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 1st day of December, 1976, she served the within  
Notice of Determination by (~~certified~~) mail upon B.E.S. Corporation  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: B.E.S. Corporation  
7 Palisade Avenue  
Emerson, New Jersey 07630  
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

1st day of December, 1976.

Marylou Samuels

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

B.E.S. CORPORATION

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For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
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Taxes under Article(s) 28 & 29 of the  
Tax Law for the Year(s) or Period(s)  
September 1, 1965 through November 30, 1971.

State of New York  
County of Albany

MARYLOU SAMUELS, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 1st day of December, 1976, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Stanley M.  
Spiegler (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Stanley M. Spiegler, P.C.  
Fogel, Kahmi & Spiegler, P.C.  
450 Seventh Avenue  
New York, NY 10001  
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

1st day of December, 1976

Marylou Samuels

Janet Back



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

December 1, 1976

TELEPHONE: (518) ~~457-3850~~

B.E.S. Corporation  
7 Palisade Avenue  
Emerson, New Jersey 07630

Gentlemen:

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 & 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia  
Supervisor of  
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
B.E.S. CORPORATION	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Periods September 1, 1965 through	:	
November 30, 1971.	:	

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Applicant, B.E.S. Corporation, 7 Palisade Avenue, Emerson, New Jersey 07630, filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods September 1, 1965 through November 30, 1971. A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 8, 1976. Applicant appeared by Frederick A. Everett, President and Stanley M. Spiegler, P.C. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Whether parochial school uniforms, sold by applicant, B.E.S. Corporation, are subject to sales tax when said uniforms are invoiced to and paid by the parents of students attending parochial schools, which are exempt organizations.

FINDINGS OF FACT

1. Applicant, B.E.S. Corporation, is an out-of-state vendor located in Emerson, New Jersey. Applicant neither registered with the Sales Tax Bureau nor filed quarterly sales and use tax returns.

2. On May 29, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant for sales tax due in the sum of \$5,058.57, plus penalty and interest of \$1,701.34 for the periods September 1, 1965 through November 30, 1971.

3. The aforesaid Notice of Determination and Demand, issued as a result of an examination of applicant's books and records, represents sales tax deemed to be due by the Sales Tax Bureau on the sale of uniforms invoiced to and paid by the parents of students attending parochial schools operated by exempt organizations.

4. The sales at issue are solicited by applicant, B.E.S. Corporation, through negotiations with the representatives of the exempt organizations. The exempt organizations reach agreement

with the applicant as to style, date of measurements, shipments and cost. The exempt organization receives a discount on the purchase of these uniforms.

5. The students are fitted for their uniforms by employees of the applicant and personnel of the exempt organizations; the fittings take place at the parochial schools. The completed uniforms are shipped directly to the students home and the students' parents are invoiced for the cost of the uniforms.

6. The students' parents make payments directly to applicant, B.E.S. Corporation, although in some cases they make payment to the exempt organization which then forwards the payment to applicant, B.E.S. Corporation.

7. Applicant, B.E.S. Corporation, upon receiving payment for the uniforms, makes payment to the exempt organization for the pre-determined sales discount.

8. Applicant, B.E.S. Corporation, contends that the sales at issue are actually sales to the exempt organizations and that, as a convenience to said exempt organization, it ships directly to the students and invoices and collects payments directly from the students' parents.

CONCLUSIONS OF LAW

A. That, only sales "by or to" organizations described in section 1116 of the Tax Law are exempt from the imposition of sales tax.

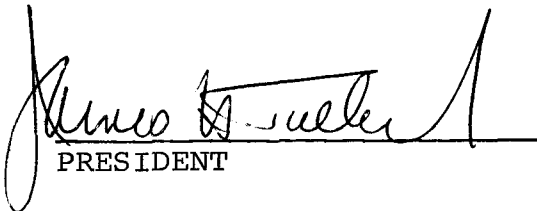
B. That, although applicant, B.E.S. Corporation, negotiated the sales with organizations described in section 1116 of the Tax Law, these organizations neither received nor paid for the uniforms when sold in the manner at issue. Furthermore, there is no indication that title of the uniforms was held by said exempt organizations.

C. That, the sales at issue were sold to the parents of students attending the parochial schools operated by the exempt organizations and not to the organizations described in section 1116 of the Tax Law; therefore, such sales are subject to sales tax within the meaning and intent of section 1105(a) of the Tax Law.

D. That, the application of B.E.S. Corporation is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 29, 1973, is sustained.

DATED: Albany, New York  
December 1, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER