

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MAIDMAN PLAYHOUSES INC., T/A  
TAPPAN ZEE MOTOR INN

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~REGISTERED~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXX~~ Periods 8/1/65:  
through 2/28/67.

State of New York  
County of Albany

JANET MACK

, 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 17th day of March, 1975, she served the within

Notice of ~~XXXXXX~~ (or Determination) by ~~XXXXXX~~ mail upon MAIDMAN PLAYHOUSES INC.,

T/A TAPPAN ZEE MOTOR INN ~~XXXXXXXXXXXX~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Maidman Playhouses Inc., T/A  
Tappan Zee Motor Inn

c/o Irving Maidman

1465 Broadway

New York, New York

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 Post Office Department within the State of New York.

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

Sworn to before me this

17th day of March, 1975.

Katherine D. Mauley

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MAIDMAN PLAYHOUSES INC., T/A  
TAPPAN ZEE MOTOR INN

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXXX~~ Periods 8/1/65:  
through 2/28/67.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

State of New York  
County of Albany

JANET MACK, 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 17th day of March, 1975, she served the within  
Notice of ~~XXXXXX~~ (or Determination) by ~~XXXXXX~~ mail upon DONALD STEINBERG, ESQ.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Donald Steinberg, Esq.  
200 Park Avenue  
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

17th day of March, 1975.

Katherine D. Manly

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

DATED: Albany, New York  
March 17, 1975

Maidman Playhouses, Inc., T/A  
Tappan Zee Motor Inn  
c/o Irving Maidman  
1465 Broadway  
New York, New York

Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **1138 and 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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
MAIDMAN PLAYHOUSES, INC., T/A	:	
TAPPAN ZEE MOTOR INN	:	DETERMINATION
for a Revision of a Determination or	:	
for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax	:	
Law for the Period 8/1/65 through	:	
2/28/67.	:	

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Applicant, Maidman Playhouses, Inc., t/a Tappan Zee Motor Inn, filed an application for a revision of a determination issued under date of August 5, 1969, for sales and use taxes under Articles 28 and 29 of the Tax Law for the period 8/1/65 through 2/28/67.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 14, 1973, before Nigel G. Wright, Hearing Officer. The taxpayer was represented by Joseph Steinberg & Donald Steinberg, Esqs., (Donald Steinberg, Esq., of counsel). The Sales Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUES

The issues presented by this case are:

I. Whether applicant, Maidman Playhouses, Inc., t/a Tappan Zee Motor Inn, was a bulk sale purchaser of Tepmac, Inc., under section 1141(c) of the Tax Law with the result that it would be

liable for the unpaid portion of Tepmac, Inc.'s sales tax liability incurred prior to the date of the transfer.

FINDINGS OF FACT

1. Tepmac, Inc., trading as Tappan Zee Motor Inn, had been operating the Tappan Zee Motel as lessee for sometime prior to 1965. During 1966, Maidman Playhouses, Inc., through its president and sole stockholder, Irving Maidman, had advanced a total of \$102,220.40 to Tepmac, Inc.

2. By agreement dated August 14, 1966, Maidman Playhouses, Inc. received from Tepmac, Inc., a collateral assignment of the motel's lease as security for its loans. As a result of Tepmac, Inc.'s default in repayment of the loans, Maidman Playhouses, Inc. foreclosed the collateral assignment and received an absolute assignment of the lease effective January 1, 1967.

3. The lease was assumed by Maidman Playhouses, Inc., subject to chattel mortgages encumbering the furniture and fixtures of the motel. At no time was the fee to the property involved. On April 3, 1970, Maidman Playhouses, Inc. paid \$2,463.52 to the State Tax Commission, said sum representing the sales tax due on the bulk transfer of fixtures and equipment. Said sum was paid in response to Notice No. 90601913 dated July 29, 1969. This is not in issue in this hearing.

4. The motel was operated by Maidman Playhouses, Inc. for the two-month period of January and February 1967 and Maidman Playhouses, Inc. filed sales tax returns covering its own operating receipts during those months.

5. On August 5, 1969, a Notice of Determination and Demand under jeopardy was issued against Maidman Playhouses, Inc., assessing additional sales taxes, penalties and interest of \$22,783.91 based upon audited returns assessed against the vendor (Tepmac, Inc.) and purchaser (Maidman Playhouses, Inc.).

CONCLUSIONS OF LAW

The assignment of the lease here in question was made in settlement of a valid security interest such as would not be subject to the bulk transfer provisions of the Uniform Commercial Code (See UCC sec. 6-102(4); 6-103(3)). Therefore, said transfer will not be considered to be an "assignment in bulk" or a sale or transfer under section 1141(c) of the Tax Law which imposes a transferee liability upon transferees of business assets.

The determination under review is erroneous in its entirety and is cancelled.

DATED: Albany, New York  
March 17, 1975

STATE TAX COMMISSION

PRESIDENT

  
COMMISSIONER

  
COMMISSIONER