

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MYRTLE MATTRESS & CLOTHING CO., INC. and  
DANIEL ADLER, ERIC SCHWARZKOPF, MURRAY ADLER  
and DONALD FELDMAN, As Officers Thereof:  
For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the (Year/s) Period September 1, 1967  
through February 28, 1971.

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

State of New York  
County of Albany

Martha Funaro , 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 6th day of March , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Edward T. Braverman,  
Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Edward T. Braverman, Esq.  
200 Garden City Plaza  
Garden City, 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

6th day of March , 1974

Myrtle Wright

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MYRTLE MATTRESS & CLOTHING CO., INC. and  
DANIEL ADLER, ERIC SCHWARZKOPF, MURRAY ADLER  
and DONALD FELDMAN, As Officers Thereof;

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

For a Redetermination of a Deficiency or  
a Refund of Sales & Use :  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ Period September 1, 1967  
through February 28, 1971.

State of New York  
County of Albany

Martha Funaro, 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 6th day of March , 1974 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Daniel Adler

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Daniel Adler  
c/o Myrtle Mattress & Clothing Co., Inc.  
594 Myrtle Avenue  
Brooklyn, New York 11205  
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

6th day of March , 1974.

Nigel Wright

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MYRTLE MATTRESS & CLOTHING CO., INC. and  
DANIEL ADLER, ERIC SCHWARZKOPF, MURRAY ADLER  
and DONALD FELDMAN, As Officers Thereof:  
For a Redetermination of a Deficiency or  
a Refund of Sales & Use :  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the (Year(s)) Period September 1, 1967  
through February 28, 1971.

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

State of New York  
County of Albany

Martha Funaro, 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 6th day of March, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Eric Schwarzkopf

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Eric Schwarzkopf  
c/o Myrtle Mattress & Clothing Co., Inc.  
594 Myrtle Avenue  
Brooklyn, New York 11205  
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

6th day of March, 1974.

Nigel Wright

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MYRTLE MATTRESS & CLOTHING CO., INC. and  
DANIEL ADLER, ERIC SCHWARZKOPF, MURRAY ADLER  
and DONALD FELDMAN, As Officers Thereof  
For a Redetermination of a Deficiency or  
a Refund of Sales & Use :  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year/s)~~ Period September 1, 1967  
through February 28, 1971.

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

State of New York  
County of Albany

Martha Funaro , 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 6th day of March , 19 74, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Murray Adler  
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Murray Adler  
c/o Myrtle Mattress & Clothing Co., Inc.  
594 Myrtle Avenue  
Brooklyn, New York 11205  
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

6th day of March , 1974

Myrtle Wright

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MYRTLE MATTRESS & CLOTHING CO., INC. and  
DANIEL ADLER, ERIC SCHWARZKOPF, MURRAY ADLER  
and DONALD FELDMAN, As Officers Thereof:  
For a Redetermination of a Deficiency or  
a Refund of Sales & Use :  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the (Year(s)/ Period September 1, 1967  
through February 28, 1971.

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

State of New York  
County of Albany

Martha Funaro , 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 6th day of March , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Donald Feldman

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Donald Feldman  
c/o Myrtle Mattress & Clothing Co., Inc.  
594 Myrtle Avenue  
Brooklyn, New York 11205  
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

6th day of March , 1974.

Myrtle Mattress & Clothing Co., Inc.

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

Applications  
In the Matter of the Petition

of  
MYRTLE MATTRESS & CLOTHING CO., INC., DANIEL ADLER  
ERIC SCHWARZKOPF, MURRAY ADLER & DONALD FELDMAN, AFFIDAVIT OF MAILING  
As Officers Thereof : OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL  
For a Redetermination of a Deficiency or  
a Refund of Sales & Use :  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period September 1, 1967  
through February 28, 1971

State of New York  
County of Albany

Martha Funaro , 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 6th day of March , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Myrtle Mattress &  
Clothing Co., Inc. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Myrtle Mattress & Clothing Co., Inc.  
594 Myrtle Avenue  
Brooklyn, New York 11205

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

6th day of March , 1974.

Myrtle Mattress & Clothing Co., Inc.

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MYRTLE MATTRESS & CLOTHING CO., INC. and  
DANIEL ADLER, ERIC SCHWARZKOPF, MURRAY ADLER  
and DONALD FELDMAN, As Officers Thereof  
For a Redetermination of a Deficiency or  
a Refund of Sales & Use :  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the Year(s) Period September 1, 1967  
through February 28, 1971.

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

State of New York  
County of Albany

Martha Funaro , 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 6th day of March , 19 74, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Stanley Finkel, C.P.A.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Stanley Finkel, C.P.A.  
516 Fifth 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

6th day of March , 1974

Myrtle Wright

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

~~NORMAN X. HALLMAN~~ PRESIDENT  
Mario A. Procaccino,

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 6, 1974

**Myrtle Mattress & Clothing Co., Inc.**  
**594 Myrtle Avenue**  
**Brooklyn, New York 11205**

**Gentlemen:**

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

Please take further notice that pursuant to **sections 1138 & 1243** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
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 relat-  
ing 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

cc Petitioner's Representative  
Law Bureau





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
Mario A. Procaccino,  
~~FORMERLY TAX MAN~~ PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

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

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

**March 6, 1974**

**Mr. Daniel Ailer**  
**c/o Myrtle Mattress & Clothing Co., Inc.**  
**594 Myrtle Avenue**  
**Brooklyn, New York 11205**

**Dear Mr. Ailer:**

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

Please take further notice that pursuant to **sections 1138 & 1243 of**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
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 relat-  
ing 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

cc Petitioner's Representative  
Law Bureau



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
Mario A. Procaccino,  
~~XXXXXXXXXXXX~~ PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227  
AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 6, 1974

Mr. Murray Adler  
c/o Myrtle Mattress & Clothing Co., Inc.  
594 Myrtle Avenue  
Brooklyn, New York 11205

Dear Mr. Adler:

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

Please take further notice that pursuant to **sections 1138 & 1243** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
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 relat-  
ing 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

cc Petitioner's Representative  
Law Bureau



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

Mario A. Procaccino,  
~~NORMAN F. SALIMAN~~, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

**March 6, 1974**

**Mr. Eric Schwarzkopf,  
c/o Myrtle Mattress & Clothing Co., Inc.  
394 Myrtle Avenue  
Brooklyn, New York 11205**

**Dear Mr. Schwarzkopf:**

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

Please take further notice that pursuant to **sections 1133 & 1243** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
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 relat-  
ing 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

cc Petitioner's Representative  
Law Bureau



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
~~MARIO A. PROCACCINO~~, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 6, 1974

Mr. Donald Feldman  
c/o Myrtle Mattress & Clothing Co., Inc.  
594 Myrtle Avenue  
Brooklyn, New York 11205

Dear Mr. Feldman:

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

Please take further notice that pursuant to **sections 1136 & 1243** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
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 relat-  
ing 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

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Applications	:	
of	:	
MYRTLE MATTRESS & CLOTHING CO., INC.	:	
and	:	
DANIEL ADLER, ERIC SCHWARZKOPF, MURRAY ADLER	:	DETERMINATION
and DONALD FELDMAN, As Officers Thereof	:	
for a Hearing to Review a Determination	:	
or a Denial of a Refund of Sales and Use	:	
Taxes under Articles 28 and 29 of the	:	
Tax Law for the Period September 1, 1967	:	
through February 28, 1971.	:	

---

Myrtle Mattress & Clothing Co., Inc. and Donald Adler, Eric Schwarzkopf, Murray Adler and Donald Feldman, as officers thereof, filed applications for a hearing to review a determination issued under date of August 12, 1971, for sales taxes in the amount of \$44,377.02 plus penalty and interest of \$8,537.63 for a total of \$53,325.37, due under Articles 28 and 29 of the Tax Law for the period September 1, 1967 through February 28, 1971.

A hearing was held on June 12, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant was represented by Edward T. Braverman, Esq. and Stanley Finkel, C.P.A. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The primary issue in this case is the proper method of computing a bad debt deduction. A secondary issue is whether applicant can deduct theft lossess of his collections from customers.

FINDINGS OF FACT

1. Myrtle Mattress & Clothing Co., Inc. of 594 Myrtle Avenue, Brooklyn, New York, is engaged in the retail sale of merchandise including household appliances and soft goods with little or no down payment and with installments running from 12 to 36 months. They have had debt losses of about 12 or 13 percent. They employ collection agents to go to the customers' homes for collection. Robberies from the collection agents are not unusual. Insurance companies will not write insurance for risks in the neighborhood of applicant's business.

2. The determination under review increases taxable sales (before any deduction for bad debts) by \$754,928.00 and computes a tax due therein of \$44,787.74. Of the increased taxable sales, \$168,789.21 is due to bad debts, which had been written off by applicant. The remainder of \$586,138.79 is due primarily to a failure to report and pay over taxes during some of the quarters under review. The applicant now claims a reduction from the total amount of sales of \$5,000.00 as estimated losses due to robberies from his collection agents. Subsequent to the determination under review, the Sales Tax Bureau has allowed a bad debt deduction of \$7,224.16 and a reduction of tax liability attributable thereto of \$410.72 for a net amount due of \$44,377.02 plus penalty and interest.

3. The bad debt deduction allowed was computed by multiplying total bad debts by a ratio which was determined from a sampling of the bad debts. The denominator of the ratio was the total bad debts for the sample period. The numerator of said ratio was computed as follows: Where no down payment was made, the full amount of the bad debt was included in the numerator; where a down payment was made and said down payment

exceeded the sales tax due on the sale, then no amount of the bad debt was included in the numerator; where a down payment was made and said down payment did not exceed the sales tax due on the sale, then a ratio equal to the amount of said down payment divided by the amount of said sales tax was applied to the amount of the bad debt to determine a portion of the full amount of the bad debt and said portion was included in the numerator.

4. The applicant requests that he be allowed to reduce his tax liability by the amount of tax attributable to all amounts written off by him.

#### CONCLUSIONS OF LAW

A. The sales tax is due when an article is delivered to a purchaser and is measured by the entire sale price including both cash received and any account receivable (Tax Law §1101(b)(3)). It is assumed that the first cash received by a vendor is for the entire sales tax due on the sale whether or not the entire sales price is received (see Sales Tax Bureau Information Letter November 9, question 210); the statute explicitly provides that a different rule can be adopted only by regulation (Tax Law §1132(d)) and such regulation has not been promulgated. It is the intent of regulation 525.5 providing for uncollectible accounts pursuant to section 1132(e) of the Tax Law that such accounts shall reduce gross sales only where the vendor would otherwise lose money by being required to pay the State more than he collects from the purchaser. In this case, applicant has not shown that this is so.

B. The claimed theft loss cannot be allowed. The vendor has made a taxable sale irrespective of the disposition of the proceeds. The vendor furthermore is not only a trustee for the taxes collected, but is personally liable and is a debtor for such taxes (Tax Law §1133(a); Sales Tax Bureau Release September 28, 1972, P-H State and Local Taxes-New York ¶23,350.

C. The Penalty and interest on the amounts of the determination not relating to bad debts is entirely appropriate. No excuse can be or has been made for nonpayment.


DETERMINATION


The determination under review is correct and is due together with such additional interest as shall be computed under section 1145(a) of the Tax Law.

DATED: Albany, New York  
March 6, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER