Wolin, Emanuel . Sales Tax Pet. 1973

#### MEMORAL DUM

70 Source Tax Commission

FROM Mr. Rook

Subject Unanuel Wolin

Files Tax Determination issued December 19, 1973

On the above date we issued a determination upon detailt. Normally, according to our practice, upon the representation of the taxpayer and our "address anknown" communication. I would open the case, but this dates back to December 1973.

T recommend that we schedule another hearing and as your advice. If you agree, places initial and a carn.

EDWARD ROOK

SECRETARY OF BUTE DIRIGH TAX COMMISSION

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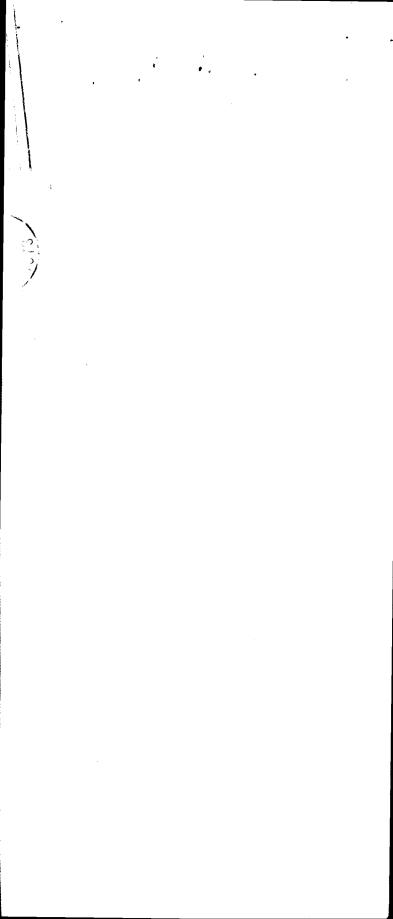
STATE OF NEW YORK

Department of Taxation and Finance STATE CAMPUS ALBANY, N. Y. 12227

Mr Emaruel Wolin t/a Manny's 1709 Pitkin Avenue Brooklyn, New York

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Migel D. Wagney



STATE TAX COMMISSION Mario A. Procaccino,

# STATE OF NEW YORK

# DEPARTMENT OF TAXATION AND FINANCE

**BUILDING 9, ROOM 214A** STATE CAMPUS **ALBANY, N. Y. 12226** 

> AREA CODE 518 457-2655, 6, 7

STATE TAX COMMISSION HEARING UNIT

> EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

A. BRUCE MANLEY MILTON KOERNER

Dated: Albany, New York

December 19, 1973

Mr. Emanuel Wolin t/a Manny's 1709 Pitkin Avenue Brooklyn, New York

Dear Mr. Wolin:

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

Please take further notice that pursuant to Section(s) 1243 & 1138 of the Tax Law, any proceeding in court to review an adverse decision 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

Petitioner's Representative

Law Bureau

Enc.

# STATE TAX COMMISSION

In the Matter of the Application

of

EMANUEL WOLIN T/A "MANNY'S"

for a hearing to review a determination of Sales and Use Taxes due under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through November 30, 1967.

DETERMINATION ON DEFAULT

Emanuel Wolin, trading as "Manny's", filled an application
pursuant to section 1138 of the Tax Law for a hearing to review
a determination of sales and use taxes due under Articles 28 and
29 of the Tax Law for the period August 1, 1965 through Movember 10,
1967. A hearing was duly scheduled before Nigel G. Wright, Hearing
Officer, for 1:00 P.M. on May 12, 1971, at the offices of the Sente
Tax Commission, Room 781, 80 Centre Street, New York City. Movember 18.
Best, Esq., (Francis K. Boylan, Esq., of Counsel) appeared for the
Sales Tax Bureau. The applicant did not appear in person or by
representative. The file of the Sales Tax Bureau relating to said
application has been duly examined and considered.

# FINDINGS OF FACT

- in Brooklyn and Queens, Many of his sales are on an installment, plan requiring a 10% down payment. These are allegeddout have not been proven to be conditional sales with title passing only when the final payment is made. Applicant filed sales tax returns based on gross sales as reduced by the amount of uncollectable accounts written off during the return period.
- 2. The determination under review finds that the sales subject to tax should not be reduced by undellectable accounts receivable.

  Upon audit of applicant's books it was found that in the case of each sale, including those later becoming uncerlangible, should be

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DETERMINETION

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Sales Tex Burghu. The applicant did not appear in person or by representative, the file the Sales Cax Sureau relating to said application has been duly transned and considered.

# FIRDINGS OF TACE

Applicant operates general merchandine and cleching stores

in armoviru and Oneene. Meny of his sales are on an installment. p.an requiring a 10% down payment. These are alleged but have not polit medw vino intractic citi ettim medes incontinos ed of nevera peed tions payment is made, deplicant this earlies tax returns payed on educated as realized for the amount of united as saids senting . Doired nautor of putaub 220 petrica

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- a payment had been received to obver the bales that due on them sale. The determination also makes certain minor adjustments which have not been contested.
- The applicant received notice of the hearing by mail sent to the address shown on his petition.

# 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 ferther entire sales tax due on the sale whether or not the entire sales for entire is received (See Sales Tax Bureau Information Letter Hovember 9, question 210); the statute explicitly provides that a different rule can be adepted 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 etherwise lose makes by being required to pay the State more than be collects from the purchaser. In this case, appligant has not shown that this is set.
  - B. The applicant is in default in this proceeding.

## DECISION

The application is denied and the determination under review is affirmed.

DATED: Albany, New York

December 19, 1973

STATE TAX COMMISSION

COMMISSIONER

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3. The applicant rejetved motion of the hearing by motif

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DATEDY Albany, New York

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#### STATE OF NEW YORK STATE TAX COMMISSION

Application

In the Matter of the Retition

of

EMANUEL WOLIN T/A "MANNY'S"

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 19th day of December , 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon Emanuel Wolin t/a Manny's (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Emanuel Wolin

t/a Manny's 1709 Pitkin Avenue Brooklyn, 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

19th day of December , 1973.

Jantha Dunaco



A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

Mario A. Procaccino,

# STATE OF NEW YORK

# DEPARTMENT OF TAXATION AND FINANCE

**BUILDING 9, ROOM 214A** STATE CAMPUS **ALBANY, N. Y. 12226** 

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December 19, 1973

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Very truly yours,

Myel I Wright

Nigel G. Wright

Enc. HEARING OFFICER

Petitioner's Representative

Law Bureau

CC:

STATE TAX COMMISSION

In the Matter of the Application

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EMANUEL WOLIN T/A "MANNY'S"

DETERMINATION

on

for a hearing to review a determination of Sales and Use Taxes due under

Articles 28 and 29 of the Tax Law for the period August 1, 1965 through

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DEFAULT

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### FINDINGS OF FACT

- 1. Applicant operates general merchandise and clothing stores in Brooklyn and Queens. Many of his sales are on an installment plan requiring a 10% down payment. These are alleged but have not been proven to be conditional sales with title passing only when the final payment is made. Applicant filed sales tax returns based on gross sales as reduced by the amount of uncollectible accounts written off during the return period.
- 2. The determination under review finds that the sales subject to tax should not be reduced by uncollectible accounts receivable.

  Upon audit of applicant's books it was found that in the case of each sale, including those later becoming uncollectible, enough of

a payment had been received to cover the sales tax due on that sale. The determination also makes certain minor adjustments which have not been contested.

3. The applicant received notice of the hearing by mail sent to the address shown on his petition.

# 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 applicant is in default in this proceeding.

# DECISION

The application is denied and the determination under review is affirmed.

DATED: Albany, New York

December 19, 1973

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER