

Wolin, Emanuel
Sales Tax Pet
1973

MEMORANDUM

TO : State Tax Commission
FROM : Mr. Rook
SUBJECT: Emanuel Wolin
Sales Tax Determination issued December 19, 1973

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

I recommend that we schedule another hearing and ask your advice. If you agree, please initial and return.

EDWARD ROOK
SECRETARY OF THE STATE TAX COMMISSION

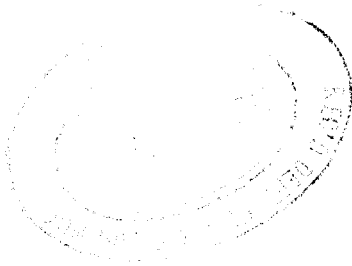
28.1975
Enclosure
Mr. Kuperman

RESCHEDULE 5/16/75

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227



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

Moved. left no address
No such number
Moved not forwarded
Addressee unknown

Page D. Wright



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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

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 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

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", filed 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 November 30, 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 State Tax Commission, Room 781, 80 Centre Street, New York City. Edward H. 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

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

STATE OF NEW YORK
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, 1966 through
November 30, 1967.

DETERMINATION
ON
DEFAULT

Emmanuel Wolin, trading as "Manny's", filed an application
pursuant to section 116 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, 1966 through November 30,
1967. A hearing was duly scheduled before Nigel G. Wright, Hearing
Officer, for 1:00 P.M. on May 22, 1971, at the office of the State
Tax Commission, Room 781, 80 Centre Street, New York City. Edward H.
Boat, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the
Sales Tax Bureau. The applicant did not appear in person or by
representative. The title of the Sales Tax Bureau relating to said
application has been duly examined and considered.

FINDINGS OF FACT

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 uncollected accounts
written off during the return period. The determination under review states 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 recorded as uncollectible, amount 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

Wanda B. Kravitz
COMMISSIONER

Charles Manley
COMMISSIONER

Milton Koenig
COMMISSIONER

payment and to be received to cover the sales tax on the sale. The determination also makes certain minor adjustments which have not been contested.

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CONCLUSIONS OF LAW

A. The sales tax is due when an article is delivered to a purchaser and is measured by the entire sales 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 2, question 210; the statute explicitly provides that a different rate can be adopted only by regulation (Tax Law §1102(d)) and such regulation has not been promulgated. It is the intent of regulation 52.5 providing for uncollectible accounts to prevent section 1102(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.

DATE: Albany, New York
December 19, 1973

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

Application
In the Matter of the Petition
:
of
EMANUEL WOLIN T/A "MANNY'S" :
:
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 August 1, 1965
through November 30, 1967

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.

James S. Van Katten

Martha Funaro



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

STATE TAX COMMISSION

Mario A. Procaccino,

~~XXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

December 19, 1973

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

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of the State Tax Commission enclosed herewith.

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Section(s) **1243 & 1138** 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

In the Matter of the Application	:	
of	:	
EMANUEL WOLIN T/A "MANNY'S"	:	DETERMINATION
	:	ON
for a hearing to review a determination	:	DEFAULT
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.	:	

Emanuel Wolin, trading as "Manny's", filed 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 November 30, 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 State Tax Commission, Room 781, 80 Centre Street, New York City. Edward H. Best, Esq., (Francis X. 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

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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

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B. The applicant is in default in this proceeding.

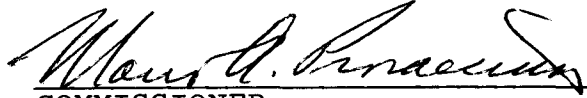
DECISION

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

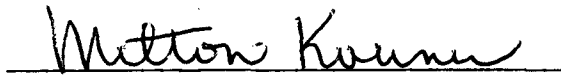
DATED: Albany, New York

December 19, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER