

STATE OF NEW YORK
STATE TAX COMMISSION

*Ocean Catering
falls & Co*

In the Matter of the Petition

of

Ocean Catering Corp.

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) 8/1/65 to
8/31/66

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

State of New York
County of Albany

Claire A. Draves, 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 30th day of December, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Seymour Temkin

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Seymour Temkin
189 Montague Street
Brooklyn, New York 11201

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

30th day of December, 1970.

Linda Wilson

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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age, and that on the 30th day of December, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Ocean Catering
Corp. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Ocean Catering Corp.
T/A Chateau D'or
2560 Ocean 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

30th day of December, 1970.

Linda Wilson

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
OCEAN CATERING CORP.	:	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 Period from August 1, 1965 to	:	
August 31, 1966	:	

Ocean Catering Corporation, applied pursuant to Tax Law Section 1138 for a hearing for revision of a determination or for refund of sales tax under Article 28 and 29 of the Tax Law for the period from August 1, 1965 to August 31, 1966. Pursuant to a notice to the petitioner dated August 7, 1969, a hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on September 9, 1969 before Francis X. Boylan, Hearing Officer. The petitioner appeared by Seymour Temkin, CPA and the Sales Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, of counsel.)

FINDINGS OF FACTS

1. On July 12, 1967 a notice of determination and demand for payment of sales and use taxes due was issued by the Sales Tax Bureau under notice number 90,752,195 for the period August 1, 1965 through August 31, 1966. The notice contained a statement of tax deficiency in the sum of \$456.26 and penalties and interest of \$92.55.

2. On August 12, 1967 petitioner's accountant filed an application for revision of a determination or for refund of sales tax for the period from August 1, 1965 to August 31, 1966.

3. Petitioner concedes that taxable sales of \$2040.00 made outside of the City of New York between August 1, 1965 and August 31, 1966 were not reported by petitioner and that an additional tax of \$40.80 was properly assessed.

4. Petitioner concedes that on sales made within the City of New York (between August 1, 1965 and August 31, 1966), \$97.34 in sales taxes was collected but not paid over to the Sales Tax Bureau on taxable sales of \$1946.80 and that an additional tax of \$97.34 was properly assessed.

5. \$804.00 was collected by petitioner from customers in payment of hat check charges at catered affairs outside the City of New York. Petitioner paid over these receipts to the hat check concessionaire. These charges were itemized in the total bill given by petitioner to the customer. Petitioner did not remit sales tax on these receipts.

6. Sales tax on services of Kashruth supervisors rendered at catered affairs outside the City of New York were paid by the petitioner and the assessment for such tax was in error. The charges for the services of the Kashruth supervisors totaled \$595.00 resulting in a sales tax of \$11.90.

7. During August 1965 \$300 was received by petitioner from customers in payment of fees of Rabbis, Cantors and Soloists for the performance of their duties at wedding ceremonies in the City of New York. These sums were then paid by petitioner to the respective parties.

8. Between September 1, 1965 and November 30, 1965, \$1000 was received by petitioner from customers in payment of fees of Rabbis, Cantors and Soloists for the performance of their duties at wedding ceremonies in the City of New York. These sums were then paid by petitioner to the respective parties.

9. \$3020 was paid by petitioner to Temples outside the City of New York as commissions for the use of their premises for catered functions. The commissions were based on the gross amounts billed to the customers. Sales tax was charged to the customers on the gross amounts billed.

10. On May 27, 1969, petitioner paid the sum of \$654.75 to the Department of Taxation and Finance. This represented payment of the assessed tax plus penalties and interest.

CONCLUSIONS OF LAW

1. Petitioner application for revision of a determination or for refund of sales tax for the period (August 1, 1965 through August 31, 1966) was timely filed.

2. Petitioner concedes sales taxes totaling \$138.14 were properly assessed.

3. Monies received by petitioner from customers in payment of fees of Rabbis, Cantors and Soloists and paid out to said persons by petitioner were not taxable transactions for sales tax purposes.

4. Monies received by petitioner from customers in payment for services of checking hats and coats were taxable transactions for sales tax purposes.

5. Sales taxes of services of Kashruth supervisors were assessed in error.

6. Payment of commissions by petitioner to Temples for the use of their facilities based on a percentage of the gross sales price did not creat non-taxable sales by petitioner to customers as to the amount of such commissions.

7. Petition is entitled to a refund of \$66.90 plus interest and penalties paid on said sum.

DATED: Albany, New York
December 29, 1970.

STATE TAX COMMISSION

Norman Gellman
COMMISSIONER

Abner M. Kelly
COMMISSIONER

Walter Korman
COMMISSIONER

**BUREAU OF LAW
MEMORANDUM**

**TO: Ben Sheber, Chief, Field Coordination Unit
Sales Tax Bureau**

FROM: James Scott, Associate Attorney

**SUBJECT: Ocean Catering Corp.
Articles 28 & 29 - 8/1/65 - 8/31/66**

Attached are recently received copies of the minutes of a formal hearing on the above taxpayer, held September 9, 1969 and a Determination of the State Tax Commission, dated September 29, 1970.

This memorandum is limited strictly on the procedural issue of timeliness, and not on the substantive issues. I wish to call your attention to the following facts.

The Notice of Determination and Demand for Payment of Sales and Use Taxes Due (ST-570) was sent to the taxpayer on July 12, 1967. The taxpayer's representative, over a period of time, alleged to have protested the determination and demand in August of 1967. The 90 day period was up in October of 1967. A copy of the alleged August 12, 1967 letter of protest of Mr. Temkin, the taxpayer's representative, was never received in the Brooklyn District Office. On January 22, 1968 the Brooklyn District Office only received an objection to the assessment for the first time by Mr. Temkin's letter of January 19, 1968 referring to allegedly having sent a previous letter dated August 12, 1967 which, if actually sent, would have constituted a timely protest and, if not, an untimely protest.

The issue of timeliness was raised at the formal hearing several times (see pages 5-8, 25-27, 41-42, 44 and 51) and the Hearing Officer advised Mr. Temkin that he could "submit a carbon copy or other evidence of having sent a timely letter" (page 51). Subsequently, the Hearing Officer received a copy of the alleged August 12, 1967 letter attached to Mr. Temkin's September 12, 1969 letter. A reading of the transcript discloses that Mr. Temkin did not have his alleged copy at the formal hearing.

The attached Tax Commission Determination was not written up by the Hearing Officer who conducted the formal hearing, but by another Hearing Officer who, obviously, felt that a copy of the alleged letter could be submitted at any time and accepted by him as proof that the original thereof had been mailed and received some 2 years earlier.

Mr. Rossi and I recall discussing the question of obtaining a copy of an allegedly sent letter with Mr. Rook shortly after the formal hearing was closed and felt that it was an improper procedure inasmuch as anyone can make up a letter at any time and purport to have done it at some earlier period. As we recall it, Mr. Rook was of a similar opinion at that time.

We believe this to be a bad precedent and earnestly hope it does not occur again in future formal hearings.

The Sales Tax Bureau file will be retained until the statutory time to bring an Article 78 proceeding expires; it will then be returned to you.

Associate Attorney

JS:dv

Enc.

January 4, 1971

cc: Edward Rook, Esq.
Paul Coburn, Esq.