

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EMANUEL WOLIN

trading as "MANNY'S"

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ or Period ~~(s)~~
August 1, 1965 through November 30, 1967.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, 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 28th day of February, 1977, ~~she~~ served the within
Notice of Determination by (~~registered~~) mail upon Emanuel Wolin

(~~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
760 East Carl Avenue
Baldwin, 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 Postal Service within the State of New York.

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

28th day of February, 1977

Bruce Batchelor

Janet Smith



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

February 28, 1977

TELEPHONE: (518) **457-1723**

Mr. Emanuel Wolin
760 East Carl Avenue
Baldwin, New York

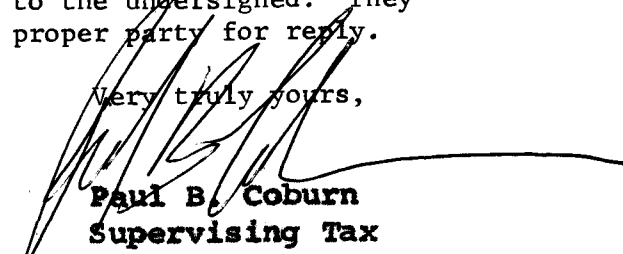
Dear Mr. Wolin:

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

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

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: ~~Paul B. Coburn, Supervising Tax Hearing Officer~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
EMANUEL WOLIN	:	
trading as "MANNY'S"	:	
	:	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 August 1, 1965 through	:	
November 30, 1967.	:	

Emanuel Wolin, trading as "Manny's", 760 East Carl Avenue, Baldwin, New York, filed an application for a revision of a determination or for refund 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 formal hearing was duly held on July 16, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The applicant appeared pro se. The Sales Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel). The record of said hearing has been duly examined and considered.

ISSUE

Whether applicant may take credit for the uncollectable balances due from customers on installment sales in reporting his gross taxable sales.

FINDINGS OF FACT

1. Applicant, Emanuel Wolin, trading as "Manny's", timely filed New York State and local sales and use tax returns for the period August 1, 1965 through November 30, 1967.

2. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$537.64, including \$425.96 in sales tax and \$111.68 in penalties and/or interest, was issued against applicant on October 21, 1968, under Notice No. 90,756,343.

3. Applicant subsequently filed an application for revision of said determination.

4. During the period at issue, applicant owned and operated a men's clothing store at 1709 Pitkin Avenue, Brooklyn, New York. He sold the business in 1969.

5. Applicant sold goods both for cash and on an installment basis. Installment sales were made pursuant to conditional sales contracts. Applicant rarely made a sale in excess of \$200.00, or had a balance receivable on any particular account in excess of \$200.00. Bad debts were incurred and written off. All bad debts were partial in nature and were typically due to the failure of a customer to pay the full amount of the last one or two installments owing on a sale. The amounts collected by applicant on each installment sale invariably exceeded the sales tax due on such sale.

6. Applicant originally reported his sales tax liability on a cash receipts basis, under which he did not include the uncollected balances due on installment sales. Applicant had used this method prior to 1965 under the now repealed New York City sales tax. Applicant was later informed that the State Tax Commission had not yet promulgated an installment sale regulation which would permit such reporting. Applicant then changed to an accrual basis, including as receipts at the time of delivery of the merchandise to the customer, all amounts to become due under the installment contracts, even though not yet actually received by him. He also began to take deductions and credits against these amounts for any bad debts which he wrote off during the tax period, and also began including as additional sales any amounts received from customers on sales already written off.

7. The audit in this case disallowed all bad debts taken as credits or deductions by applicant.

CONCLUSIONS OF LAW

A. That under section 1132(e) of the Tax Law, the State Tax Commission may provide, by regulation, for the exclusion from taxable receipts of amounts representing sales where the receipt has been ascertained to be uncollectable or, in case the tax has been paid on such receipt, for refund of or credit for the tax so paid.

B. That by regulation promulgated January 31, 1967 and

retroactively effective June 1, 1966, (former regulation section 20 NYCRR 525.5(a)) the Commission provided that where a receipt was ascertained to be uncollectable, the vendor, by complying with certain procedures, could exclude such receipt from his return or, where the tax had been paid and reported in a return, could apply for refund of or credit for the tax paid. This regulation, however, did not apply to partial bad debts where the amount collected on a particular sale exceeded the sales tax due.

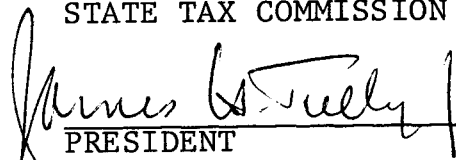
C. That by a subsequent regulation promulgated November 18, and effective December 1, 1974, the aforementioned regulation was amended to provide for a proportionate refund or credit in the event of a partial bad debt (20 NYCRR 525.5(c)). The amended regulation, which is currently in effect, applies to all sales or uses made on or after December 1, 1974 and is not retroactive.

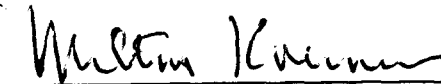
D. That since the applicant collected an amount exceeding the sales tax due on each installment sale made during the period at issue, he must apply the first monies received on each such sale to the sales tax and no credit for partial bad debts may be allowed.

E. That the application is hereby denied.

DATED: Albany, New York
February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER