

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STOUFFER MANAGEMENT FOOD SERVICE, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
6/1/71 through 2/28/74.

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 3rd day of June , 1977, ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon Stouffer Management
Food Service, Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Stouffer Management Food Service, Inc.
1375 Euclid Avenue
Cleveland, Ohio 44115
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

3rd day of June , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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STOUFFER MANAGEMENT FOOD SERVICE, INC.

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Tax Law for the ~~Year(s) or~~ Period(s) :
6/1/71 through 2/28/74.

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 3rd day of June , 19 77, she served the within
Notice of Determination by (~~certified~~) mail upon Jonathan B. Altschuler,
Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jonathan B. Altschuler, Esq.
138 West 50th Street, Suite 1834
New York, New York 10020

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

3rd day of June , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

June 3, 1977

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

Stouffer Management Food Service, Inc.
1375 Euclid Avenue
Cleveland, Ohio 44115

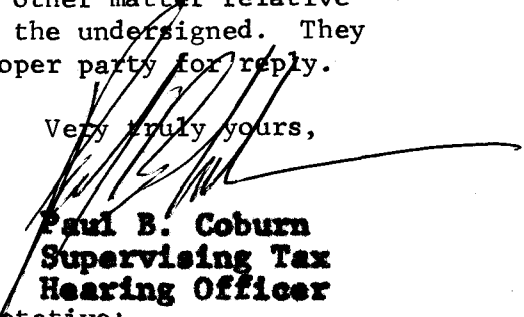
Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 and 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: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
STOUFFER MANAGEMENT FOOD SERVICE, INC. : 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 June 1, 1971 through :
February 28, 1974. :
:

Applicant, Stouffer Management Food Service, Inc., of 1375 Euclid Avenue, Cleveland, Ohio 44115, has filed an application 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 June 1, 1971 through February 28, 1974 (File No. 11301).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1976 at 9:15 A.M. The applicant appeared by Jonathan B. Altschuler, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Whether applicant, a food service corporation which operated in-house restaurant facilities for employees under contracts with various employers, was liable for sales tax on reimbursed costs, management fees and subsidy payments, which it received under said contracts.

FINDINGS OF FACT

1. Applicant, Stouffer Management Food Service, Inc. ("Stouffer"), is a Delaware corporation with its principal offices at 1375 Euclid Avenue, Cleveland, Ohio 44115. During the period under review, June 1, 1971 through February 28, 1974, Stouffer and its predecessor corporations were duly authorized and qualified to do business in the State of New York.

2. At all times relevant, Stouffer was engaged in the business, inter alia, of operating restaurants and cafeterias for business corporations in the New York Metropolitan Area including American Broadcasting Companies Inc., Burlington Industries, Inc., Equitable Life Assurance Co., Insurance Company of North America, Marine Midland Bank of New York, New York Telephone Co., J. C. Penny Company, Inc., Reader's Digest Associates, Inc., Smith Barney & Co. Inc. and J. P. Stevens & Co., Inc. ("Corporations").

3. The Corporations utilized the services of Stouffer to provide food service on their premises as a convenience to them for a substantial non-compensatory business reason, namely, the lack of nearby reasonably priced food facilities.

4. Stouffer provided its food service pursuant to the terms of "food service contracts" with each of the Corporations. The terms of the agreements were designed to provide that Stouffer would recover the expenses of operating the food service programs and also receive a separate management fee which was either a fixed amount per month, or an agreed percentage of the sales receipts actually collected.

5. The food service agreements provided that Stouffer would recover its expenses from: (a) actual receipts from sales of meals to employees of the Corporations (for which sales taxes were collected and remitted to the State); (b) the Corporations, when the receipts from the employees were less than Stouffer's expenses of providing food service under the contracts (including the management fee); and (c) the Corporations totally when the contract provided that Stouffer did not collect money from individual employee patrons. Where the income from the individual employees exceeded the agreed expenses, the contracts provided that Stouffer would pay the Corporations the excess money collected.

6. Billings to the Corporations were on a monthly basis. For billing purposes, applicant sent the Corporations monthly statements itemizing the actual cost of food and services and the management fee, with a credit for the receipts actually collected by Stouffer. Attached to the statement was an itemization of each cost, such as "meat," "dairy products," etc. The itemization was of total cost and was not related in any way to the cost of the individual meals.

7. In those food service agreements that provided that the employees pay a price for the meals served them, Stouffer collected sales tax and remitted same to the State.

8. At those locations where applicant did not collect money from the individual employees but billed one of the Corporations for costs plus a management fee, no tax was collected on such receipts. At the remaining locations where the prices charged the employees

were below cost and applicant billed the company for subsidy charges (including the management fee), no tax was collected on such receipts.

9. On December 13, 1974, as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant in the amount of \$329,827.95, plus penalty and interest of \$95,989.83, for a total of \$425,817.78 (Notice No. 90,753,630). It asserted the additional tax due on (a) receipts where applicant did not collect money from the individual employees, but billed the employer for costs plus a management fee, (b) receipts from employers where the prices charged the individual employees were below cost and applicant billed the employer for subsidy charges (including the management fee), (c) capital acquisitions, and (d) expense purchases.

At those locations where applicant Stouffer collected nothing for meals directly from the employees (item a), receipts on which no sales tax was collected for the period under review amounted to \$1,006,535.00. The Sales Tax Bureau found there was a sales tax due of \$70,457.45 on these receipts.

At the other locations where the meal prices charged employees were below cost and applicant Stouffer billed its customer corporations for subsidy charges (item b), the unreported receipts amounted to \$3,763,827.00. The Sales Tax Bureau found there was a sales tax due of \$254,148.13 on these receipts.

Applicant agrees to the additional tax liability respecting the capital acquisitions and expense purchases (items c and d), in the amount of \$5,222.37.

10. Stouffer timely filed an application for revision of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due.

CONCLUSIONS OF LAW

A. That section 1105(d) (i) of the Tax Law imposes a tax upon"...the receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charges made to patrons or customers...in all instances where the sale is for consumption on the premises where sold...."

B. That payments received by applicant, Stouffer Management Food Service, Inc., under contracts where no money was to be collected from the individual employees, but where the employer was to be billed for costs plus a management fee, were receipts from the sale of food and drink taxable under section 1105(d) (i) of the Tax Law.


C. That payments received by applicant under contracts where the prices charged the individual employees were below cost and applicant billed the employer for subsidy charges (including

the management fee) are "...other charges made to patrons or customers..." within the meaning and intent of section 1105(d)(i) of the Tax Law and are thus subject to sales tax.

D. That the application of Stouffer Management Food Service, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, issued December 13, 1974, is sustained.

DATED: Albany, New York
June 3, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER