

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

REALM RESTAURANTEURS, INC.

AFFIDAVIT OF MAILING

d/b/a Vails Gate Diner
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s) or Period(s)~~
Month of August, 1965.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 8th day of April, 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Realm Restaurateurs, Inc.
d/b/a Vails Gate Diner, ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Realm Restaurateurs, Inc.
d/b/a Vails Gate Diner
c/o Weiss & Bachrach, P.O. Box 271
Monticello, New York 12701
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)~~
~~XXXXX~~ 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

8th day of April, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

REALM RESTAURANTEURS, INC.

d/b/a Vails Gate Diner

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
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Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s) or Period(s)~~
Month of August, 1965.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 8th day of April, 19 77 ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Norman Bachrach

(representative of) the petitioner in the within proceeding,

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

Norman Bachrach, CPA
Weiss & Bachrach
P.O. Box 271
Monticello, New York 12701

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

8th day of April, 19 77

Bruce Batchelor

Janet Muck



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

April 8, 1977

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

Realn Restauranters, Inc.
d/b/a Vails Gate Diner
c/o Weiss & Bachrach, P.O. Box 271
Monticello, New York 12701

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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

of :

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 Month of August, 1965.

On June 3, 1976, the State Tax Commission was advised that the applicant desired to waive a hearing and to submit the case to the State Tax Commission upon the entire record contained in the file.

I. Whether the purchase of a diner by the applicant, Realm Restaurateurs, Inc., constituted the purchase of tangible personal property or the purchase of real property.

II. If the diner was tangible personal property, did the contract of sale, entered into prior to April 1, 1965, conform to the provisions contained in section 1106(a) of the Tax Law, thereby exempting this transaction from sales and use tax?

FINDINGS OF FACT

1. On March 6, 1965, a contract of sale was signed between De Raffele Diner Mfg. Co., Inc. and the applicant, Realm Restaurateurs, Inc., for the purchase of a prefabricated diner.

2. At the time that the sales contract of March 6, 1965 was signed, the diner was affixed to real property owned by Neptune Diner Co.

3. In May of 1965, De Raffele Diner Mfg. Co., Inc. removed the diner from the premises of Neptune Diner Co. and transported it to its shop in New Rochelle, where it was repaired and renovated.

4. In August of 1965, the refurbished diner was delivered to the applicant in New Windsor, New York. It was the responsibility of the applicant to affix the diner to his real property.

5. The sales contract dated March 6, 1965, stipulated the sales price of the diner as sixty-five thousand, one-hundred sixty dollars (\$65,160), with a down payment of two thousand dollars (\$2,000) and an additional payment of three thousand dollars (\$3,000) upon 50% completion of the diner. The balance due was paid in a series of sixty (60) notes, on a monthly basis, commencing three (3) months after the diner was ready for delivery.

CONCLUSIONS OF LAW

A. That the purchase of the diner by applicant, Realm Restaurateurs, Inc., constituted the purchase of tangible personal property within the meaning and intent of section 1101(b)(6) of the Tax Law.

B. That the applicant, Realm Restaurateurs, Inc., did not comply with the provisions of section 1106(a) of the Tax Law.

C. That the transaction between De Raffele Diner Mfg. Co., Inc. and the applicant, Realm Restaurateurs, Inc., is subject to sales tax within the meaning and intent of section 1105(a) of the Tax Law.

D. That the applicant, Realm Restaurateurs, Inc., is liable for sales tax pursuant to section 1133(b) of the Tax Law.

E. That the application of Realm Restaurateurs, Inc. d/b/a Vails Gate Diner is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, issued April 15, 1968, is sustained.

DATED: Albany, New York
April 8, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER