

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

B & M MERCHANDISE, 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 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
September 1, 1970 - August 31, 1973

State of New York
County of Albany

Marsina Donnini, 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 27 day of July, 1977, she served the within
Notice of Default Order by ~~(certified)~~ mail upon B & M Merchandise, Inc.

~~(representative of)~~ the petitioner in the within proceeding,

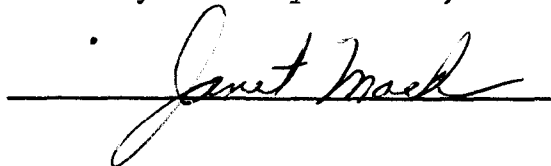
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: B & M Merchandise, Inc.
2395 Grand Concourse
Bronx, New York

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)~~
~~XXXXXX~~ 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

27 day of July, 1977.





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September 1, 1970 - August 31, 1973

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Marsina Donnini, 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 27 day of July, 1977, she served the within
Notice of Default Order by ~~(certified)~~ mail upon Edward Blaustein, CPA

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Edward Blaustein, CPA
Blaustein & Blaustein
26-13 23 Avenue Long Island City, New York 11105
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

27 day of July, 1977.

Janet Mack

Marsina Donnini



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

TELEPHONE: (518) 457-1723

July 27, 1977

┌
B & M Merchandise, Inc.
2395 Grand Concourse
Bronx, New York

Gentlemen:

Please take notice of the **DEFAULT ORDER**
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,

Joseph Chyrywaty/meg

Joseph Chyrywaty
Hearing Examiner

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

B & M MERCHANDISE, 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 September 1, 1970 through :
August 31, 1973. :

Applicant, B & M Merchandise, Inc., 2395 Grand Concourse, Bronx, New York, 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 September 1, 1970 through August 31, 1973. (File No. 00466).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 2, 1977. Applicant appeared by Edward Blaustein, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Aliza Schwadron, Esq. of counsel).

ISSUE

Whether the results of the examination of applicant's books and records by the Sales Tax Bureau for the period September 1, 1970 through August 31, 1973 properly reflected applicant's taxable sales.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Sales Tax Bureau performed an examination of applicant's books and records for the period September 1, 1970 through August 31, 1973.

2. As a result of the aforesaid examination, the Sales Tax Bureau disallowed nontaxable sales to the extent of \$157,082.72 reported on the quarterly New York State sales and use tax return filed by applicant for the period September 1, 1970 through August 31, 1973.

3. Applicant presented evidence to substantiate that \$100,305.35 of the disallowed nontaxable sales were sales to parochial schools located outside of New York State.

4. That applicant correctly reported sales of \$100,305.35 on its quarterly New York State sales and use tax returns filed for the period September 1, 1970 through August 31, 1973 as sales not subject to New York State sales tax.

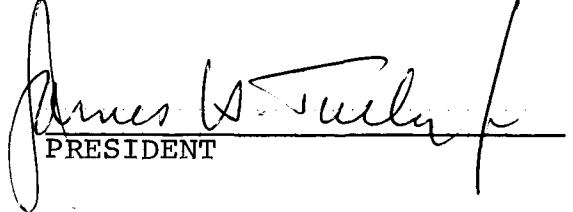
5. That applicant did not sustain the burden of proof required to substantiate that the balance of disallowed sales in the amount of \$56,777.37 were not subject to New York State sales tax when sold by it.

6. That the Sales Tax Bureau shall modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due

issued against applicant on November 22, 1974 to reflect the reduction in disallowed nontaxable sales from \$157,082.72 to \$56,777.37.

DATED: Albany, New York
July 27, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER