

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
ABRAHAM and STRAUS, A Division of :
Federated Department Stores, 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 from August 1, 1965 through :
August 31, 1968. :

Applicant, Abraham and Straus, A Division of Federated Department Stores, Inc., with principal offices at 422 Fulton Street, Brooklyn, New York 11202 (hereinafter A & S), 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 August 1, 1965 through August 31, 1968. (File No. 01004).

After extensive informal conferences and discussions between the parties, most of the difference between applicant, A & S, and the Sales Tax Bureau were settled. A stipulation of agreed facts was executed by attorneys for the State Sales Tax Bureau and for applicant, A & S, and a formal hearing was waived. The parties agreed that the decision of the State Tax Commission on the unresolved issues would be made upon consideration of all of the facts in the file.

The petitioner, A & S, appeared by Proskauer, Rose, Getz & Mendelsohn (Robert Levinsohn, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq., of counsel).

The State Tax Commission has given full examination and consideration to the entire file.

ISSUES

I. Whether deductions from current sales taxes taken by the applicant for bad debts on open account and installment sales were properly disallowed by the Sales Tax Bureau.

II. Whether penalties and interest were properly assessed against applicant.

FINDINGS OF FACT

1. Applicant, A & S, was, at all relevant times from August 1, 1965 through August 31, 1968, a division of Federated Department Stores, Inc., which was incorporated under the laws of the State of Delaware. The corporation has its principal office in Cincinnati, Ohio. Applicant, A & S, has its principal office at 422 Fulton Street, Brooklyn, New York.

2. At all relevant times, applicant, A & S, owned and operated six retail department stores in New York State. One store was located in New York City, in the Borough of Brooklyn. The other stores were located in Nassau and Suffolk Counties, in the communities of Babylon, Garden City, Hempstead, Huntington and Manhasset.

3. Applicant, A & S, timely filed sales and use tax returns for each of the thirteen periods ended August 31, 1965 through August 31, 1968. As used hereinafter, the term "sales tax" includes "use tax" when applicable.

4. During each of the thirteen periods ended August 31, 1965 through August 31, 1968, the sales tax rate was five percent in New York City and two percent in Nassau and Suffolk Counties.

5. During the period from August 1, 1965 to August 31, 1968, applicant, A & S, had net sales (gross sales less returns of merchandise) of \$794,630,400.00.

6. After conducting an audit of applicant's (A & S) sales tax returns for the periods set out hereinafter, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 18, 1970, which demanded that applicant, A & S, pay additional taxes in the amount of \$61,707.73, plus \$52,032.58 in penalty and interest charges, totalling \$113,740.31.

7. A Notice of Assessment Review dated December 18, 1970 determined the sales and use taxes due for the period August 1, 1965 through August 31, 1968 to be \$95,228.09, plus penalty and interest of \$54,155.02, for a total assessment of \$149,383.11. This amount was reduced by payment of \$70,433.21 to the outstanding balance due as of December 18, 1970 of \$78,949.90.

8. Applicant, A & S, timely made an application to the State Tax Commission in 1971 for a hearing on the determination of the Sales Tax Bureau, and for revision of the determination. On October 23, 1975, applicant, A & S, and representatives of the Sales Tax Bureau entered into a settlement agreement resolving all but one substantive issue relating to the audit of applicant's sales returns for the periods set out in Findings of Fact "3" above.

9. The unresolved issue concerns deductions for bad debts that were disallowed by auditors of the Sales Tax Bureau, and the penalty and interest related thereto. The auditors added certain of the bad debts to taxable sales. On the basis of the auditor's computations, the Sales Tax Bureau determined that the applicant should have reported additional sales amounting to \$1,219,796.00, including sales tax and service charges, for the period under audit. It calculated the additional sales for each of the three types of accounts offered by A & S as follows: Regular Charge Account - \$109,874.09; Permanent Budget Account - \$656,019.08; and Convenient Payment Account - \$453,902.97. The tax attributable to these additional taxable sales is \$38,045.00.

10. Bad debts arise when customers fail to pay for goods that were purchased on credit.

11. Applicant does, and at all relevant times did, offer three different types of accounts pursuant to which credit was

advanced to customers. These accounts are the Regular Charge Account; the Permanent Budget Account and the Convenient Payment Account.

12. The Regular Charge Account is a 30 day account. The entire balance of the account is due within thirty days of the billing date. No down payment is required when the customer selects an item at the store. No finance charges are assessed if a customer makes a late payment.

13. The Permanent Budget Account (hereinafter "PBA") is a revolving credit account. The Convenient Payment Account (hereinafter "CPA") is an installment sales account. In both types of accounts, payments are spread over a number of months and finance charges are assessed. Customers receive a bill each month. They may avoid finance charges by paying the entire balance shown on the bill.

14. Down payments are not required for purchases charged on a PBA account. The amount due to be paid on the PBA account charges each month is in relation to the outstanding balance. (The term "balance" as used above and hereafter includes the sales tax).

15. The CPA account is for purchases of over \$25.00. The initial purchase under the account must be \$50.00 or more. Down payments are required except when a purchase is made pursuant to

a special promotion sale, or the customer already has a regular charge, CPA or PBA account with A & S. Payments are scheduled over a fixed number of months and according to the highest balance shown on the account at any time. The amount due to be paid each month does not vary as the balance decreases; however, if subsequent purchases increase the balance beyond the previous highest balance, the monthly payment will be increased. The amount of the required monthly payment then remains constant until the account is paid in full.

16. In the case of each of the applicant's credit accounts during the audit period, applicant did not, in the monthly bill to the customer, state the sales tax and the sales price separately, in setting forth the balance from which the amount of the monthly payment due, as set forth in paragraphs 12, 14 and 15, above, was calculated. Likewise, the amount of the down payment on CPA accounts, when required as indicated in paragraph 15, above, was calculated with reference to the total balance due, including both sales price and sales tax. In no case was the amount of a down payment or first payment arrived at by including it therein, and collecting the full sales tax and adding a separate amount calculated solely with reference to the sales price before tax.

17. The total number of active A & S charge accounts, including regular, PBA and CPA, was approximately 750,000 in 1965. The number of active charge accounts rose steadily during the audit

period, reaching approximately 1,150,000 in 1968. The approximate number of credit sales A & S made during the four fiscal years from February 1965 to January, 1969 is as follows: 1965 - 11,951,700; 1966 - 12,568,500; 1967 - 12,652,000; 1968 - 11,952,600.

18. At all relevant times, applicant maintained a manual ledger card in its credit department for each customer who had an account with the store. Each month entries were made on the ledger card. Those entries showed the balance due on the customer's account, the payments received during the previous month and the amount due that month.

19. The ledger cards were reviewed periodically to determine whether accounts were delinquent. If an account was delinquent, a flag was placed on it. The flag indicated the age of the delinquent account. If payment was not received after a specified period of time, the balance due on the account was written off as an uncollectible bad debt.

20. Write-offs occurred after different periods of time for each type of account. Applicant's policy was to write off regular charge accounts as of the end of any billing period if the payments received in the preceding year were insufficient to cover the total balance due on the account 13 months prior thereto. Applicant wrote off PBA accounts as of the end of any billing period if there had been insufficient payments during

the preceding nine months to cover the monthly payment due on the account nine months prior thereto. It wrote off CPA accounts if it had failed to receive at least four of the minimum payments due during the prior twelve month period.

21. When an account was written off, the ledger card was transferred from files in applicant's credit department to its attorney-accounts section. The amount of the bad debt was recorded in the accounting department and the account was sent to an attorney for collection of the balance due.

22. Applicant computed its bad debt losses every three months. These losses were calculated in applicant's accounting department based on totals (that had been prepared in the credit department) of the uncollectible balances on the individual ledger cards, less any sums collected during the period from accounts previously written off.

23. The sum which applicant derived was the bad debt deduction that it took in arriving at the total taxable sales reported on its sales tax returns. As a result of its computations, applicant paid the sales tax on a pro rata basis. The amount of tax it paid bore the same relation to the amount of the tax due on the entire purchase price that the amount collected on the sale bore to the total sales price. In other words, if the purchase price of an item subject to a 5% tax was \$100, but the store collected \$20 on the sale, it would pay \$1 in tax rather than the \$5 that it would have paid had the full purchase price been collected.

24. Applicant used the same bad debt calculation for all purposes, including preparation of its financial statements and computation of its income, franchise and sales taxes.

25. All bad debt write-offs were claimed on sales tax returns filed within three years from the date of filing of the return, on which the sales giving rise to the bad debts initially had been reported.

26. The auditors who audited applicant's sales tax returns for the periods set forth above, did not calculate the sales tax due on bad debts on a pro rata basis. Instead, they calculated the sales tax on the full purchase price of an item and treated any payments that A & S received as applicable first to the entire amount of the sales tax on the total sales price and then to payment for the item. In other words, using the example set forth in paragraph 23, above, of the \$20 paid on the \$100 item, the auditors would apply the first \$5 to the sales tax and the remaining \$15 to payment of the item.

27. The auditors drew a random sample of ledger cards written off as uncollectible from each of the three types of accounts offered by A & S and reviewed the bad debt deductions that had been made.

28. The auditors allowed a full bad debt deduction only in those instances in their sample when no payment had been collected by A & S.

29. On the basis of their sample, the auditors disallowed 32.9% of the bad debt deductions attributable to regular charge accounts, 73% of the bad debt deductions attributable to PBA accounts, and 76% of the bad debt deductions attributable to CPA accounts, the percentage being applied in each case to the amount of bad debts claimed by applicant, less certain undisputed adjustments. The auditors determined these percentages by dividing the amount of bad debt that they allowed in their sample of each type of account by the total amount of the bad debts claimed by applicant in the sample of that account (in each case before adjustment to eliminate service charges and sales tax). Thus, for example, the computation for the regular account was as follows:

$$\frac{\$1,105.43}{\$3,361.28} = 32.9\%$$

30. Certain of the ledger cards in the sample reviewed by the auditors contained entries showing that a number of purchases had been made by a customer over a period of time and that partial payments had been received over a period of time that overlapped the purchasing period. In such cases, the auditors only allowed bad debt deductions on purchases that were recorded subsequent to the date on which the last payment was recorded. For example, the account of C. Pooley shows the following entries:

<u>Purchase Date</u>	<u>Charged Amount</u>	<u>Payments</u>
Mar. 68	67.38	
Apr.	63.55	
May	98.08	20.00
June	112.69	
July	41.20	10.00
Aug.	24.57	
Sept.	5.63	
Oct.	5.78	
Nov. 68	5.78	
	<u>424.66</u>	<u>30.00</u>

Applicant claimed a bad debt deduction of \$394.66 on this account. In arriving at their sampling percentage, the auditors disallowed that portion of the bad debt deduction representing the \$352.90 unpaid on purchases charged from March through July, 1968, a period during which payments of \$30.00 were received. They allowed a bad debt deduction only for the \$41.76 (before the adjustments referred to in paragraph 29, above) charged to the account after the last payment had been received.

31. The auditors did not apply payments to the earliest purchases shown on the ledger cards in their sample. They applied all payments to the sales tax on all purchases, regardless of when those purchases were made. For example, the account of S. Lent shows the following entries:

<u>Purchase Date</u>	<u>Charged Amount</u>	<u>Payments</u>
Oct. '67	162.38	
Nov.	284.99	
Dec.	223.77	
Jan. '68	7.14	
Mar. '68		378.28
May		25.
June		25.
July		25.
Aug.		25.
Sept. '68	211.65	25.
Oct. '68	143.29	25.
	<u>1,033.22</u>	<u>528.28</u>

In arriving at their sampling percentage, the auditors disallowed the total amount of the bad debt deduction applicant had taken on the Lent account. They applied the payments recorded in September and October 1968 to the sales tax on the purchases recorded those two months. They did not apply those sums to payment of the balance due on the purchases recorded the previous year.

32. The audit period commences with the effective date of the New York State Sales and Use Taxes under Articles 28 and 29 of the Tax Law. Prior to that date, there was no State sales tax. Instead, A & S paid a sales tax on sales made in its Brooklyn store directly to the City of New York, as imposed by Title M, Article 2, and Title N of Chapter 46 of the New York City Administrative Code.

33. During the years that New York City administered its sales tax, it did not disallow bad debts on accounts on which A & S had received partial payments on the theory that the first payments were applicable to collection of the full sales tax. It allowed A & S to pay sales tax on its receipts on a pro rata basis (as defined in paragraph 23, above).

34. The applicable New York City regulation stated:

"Where a contract of sale has been cancelled ... or the receipts have been ascertained to be worthless, and the tax has been paid upon such receipts, the vendor may take credit for the tax paid on any subsequent return filed..., or he may file a claim for refund of the tax paid upon such receipts...."

Reg. Art. 41, CCH New York Tax Reports ¶163-214 (Transfer Binder).

35. The applicable State regulation in effect during the audit period stated:

"Where a contract of sale has been cancelled... or the receipt...has been ascertained to be uncollectible, a vendor of tangible personal property...may exclude such receipts...from his return."

New York State Compilation of Codes, Rules and Regulations, Section 525.5(a) (1967), subsequently amended.

36. Applicant stated that A & S did not learn that the State would calculate bad debt deductions in a manner different from that which had been employed by the City of New York until after it had filed sales tax returns for the periods set out in paragraph 3, above.

37. Applicant averred that A & S first learned that the State would apply the first payment received on any sale to the sales tax applicable to the total purchase price during the course of the audit of its tax returns for the periods set out above.

38. The first written statement of the State's method of calculating the sales tax due on accounts written off as bad debts that applicant received was a letter from the Brooklyn District Office of the Department of Taxation and Finance dated January 6, 1969.

39. Applicant, A & S, reported sales on an accrued basis throughout the period August 1, 1965 through August 31, 1968.

A. That the State Tax Commission is authorized by statute to exclude from taxable receipts, or to refund sales taxes already paid on amounts representing sales where the charge has been ascertained to be uncollectible, and to provide for the same by its regulations, in accordance with section 1132(e) of the Tax Law.

B. That section 1132(a) of the Tax Law requires the vendor to collect the sales tax when collecting the purchase price. The entire tax must be separately stated on the first bill or receipt given the purchaser. This sales tax applies to the entire sales whether the price is wholly in cash, or partly in an account receivable.

C. That section 1137 of the Tax Law provides that the total sales tax due must be paid to the Sales Tax Bureau when the sales tax return for the current period is timely filed.

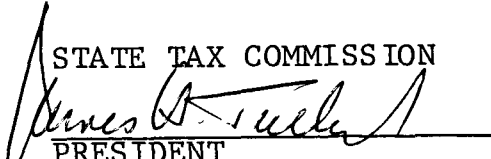
D. That during the period under review, the Sales Tax Bureau assumed that the first cash received by a vendor was for the entire sales tax due on the sale. Section 1132(d) of the Tax Law explicitly provided that a different rule could be adopted only by a regulation of the Tax Commission. Regulation 525.5, then in effect, provided credits for uncollectible accounts under section 1132(e) of the Tax Law. It stated that

such accounts shall reduce gross sales only where the vendor would otherwise lose money by being required to pay the State more than he collected from the purchaser. Applicant, A & S, has not shown such a situation to exist.


E. That the applicant, A & S, relied upon the advice of its attorneys and their bonafide opinion that it was reporting and paying sales taxes in accordance with the Tax Law and applicable regulations. Petitioner's delay in making demand tax payments is excusable. The interest in excess of the minimum and the penalty are waived and interest shall be computed at the legal six percent minimum rate set out in section 1145(a) of the Tax Law.

F. That the revised determination dated December 18, 1970 is modified to the extent indicated in Conclusion of Law "E" above, and that the petition of Abraham and Straus, a division of Federated Department Stores, Inc., is otherwise denied in its entirety.

DATED: Albany, New York
June 14, 1977

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER

In the Matter of the Petition

of

ABRAHAM & STRAUS, A DIVISION OF FEDERATED
DEPARTMENT STORES, INC.

AFFIDAVIT OF MAILING

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) ~~XXXX~~ Period(s) :
August 31, 1965 through August 31, 1968

State of New York
County of Albany

Violet Walker, 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 14th day of June, 1977, she served the within

Notice of Determination by ~~certified~~ mail upon Abraham & Straus, A Division of Federated Department Stores, Inc.

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

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

as follows: Abraham & Straus

A Division of Federated
Department Stores, Inc.

and by depositing same enclosed in a postpaid properly addressed wrapper in a
422 Fulton Street, Brooklyn, New York

(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~~ ~~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

14th day of June, 1977

Janet Mack

~~Walter Hecker~~

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ABRAHAM & STRAUS, A DIVISION OF FEDERATED
DEPARTMENT STORES, INC.

AFFIDAVIT OF MAILING

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) ~~xxx Period xxx~~ :
August 31, 1965 through August 31, 1968

State of New York
County of Albany

Violet Walker, 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 14th day of June, 1977, she served the within Notice of Determination by ~~(certified)~~ mail upon Proskauer, Rose, Goetz & Mendelsohn (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022
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
14th day of June, 1977.

Janet Mack

Violet Walker



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 14, 1977

TELEPHONE: (518) 457-1723

Abraham & Straus,
A Division of Federated
Department Stores, Inc.
422 Fulton Street
Brooklyn, New York

Gentlemen:

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: Petitioner's Representative:

Taxing Bureau's Representative:

ADIRONDACK TRANSIT
LINES, INC.
SALES TAX

APPROVAL OF CREDITS AND REFUNDS

Name and Address Adirondack Transit Lines, Inc. 18 Pine Grove Avenue PO Box 758 Kingston, NY 12401	ID No. 14-0458760	Interest <input type="checkbox"/> No Interest <input checked="" type="checkbox"/>
	Date of Claim 7-25-77	

NYS # Kingston
(5152)

Quarter Ended or Date Paid	Refund or Credit	Interest From	Interest
1/1/77 - 6/30/77	\$ 11,743.72		\$
TOTALS	\$ 11,743.72		\$

TOTAL AMOUNT OF REFUND ~~OR CREDIT~~ \$ 11,743.72

LESS CREDITS APPLIED TO QUARTER(S) ENDED \$

REFUND CHECK. \$ 11,743.72

EXPLANATION OF BASIS FOR CLAIM: Refund is granted of the tax paid on the purchases of parts, motor fuel, diesel fuel and supplies purchased by an omnibus carrier for use in local transit. Refund is made pursuant to Section 1119(b) of the Tax Law. The refund is reduced for the electricity invoices and an error in computation by \$142.80.

APPROVAL

Prepared by _____ Date _____

Principal or Assoc. Sales Tax Examiner _____ Date _____

Sales Tax Audit Supervisor _____ Date _____

Director or Asst. Director _____ Date _____

Commissioner/s/Abstain (JHT) _____ Date _____

Commissioner Milton Koerner _____ Date 11/23/77

Commissioner Thomas H. Lynch _____ Date 11/21/77

Duplicate

REFUND OR CREDIT PROCESSING CHECK LIST

B. Information Reference Check Completed

1. Prior payment record	Yes	_____
2. Outstanding assessments	Yes	_____
3. Registration of vendors	Yes	_____
4. Proper use of exemption involved	Yes	_____
5. Mathematical correctness	Yes	_____
6. Other	Yes	_____

A. Supporting Documents Attached

1. Applicable exemption certificates	Yes	_____
2. Sales invoices and/or credit memos	Yes	_____
3. Copies of contracts	Yes	_____
4. Vendor worksheets	Yes	_____
5. Certification signed by claimant	Yes	_____
6. Other	Yes	_____

Examiner Comments

RECONCILIATION OF REFUND OR CREDIT CLAIM

Amount of Claim	_____	\$
Less adjustments for:	_____	\$
Total reductions	_____	\$
Balance	_____	\$
Plus adjustments for:	_____	\$
Total additions	_____	\$
Net Refund	_____	\$