

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CASE BOX LUNCH, 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) :
3/1/71 - 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 14th day of January , 1977, she served the within
Notice of Determination by (~~certified~~) mail upon Case Box Lunch, Inc.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Case Box Lunch, Inc.
23-62 Steinway Street
Long Island City, NY 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

14th day of January , 1977.

Bruce Batchelor

Janet Mack



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

January 14, 1977

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

Case Box Lunch, Inc.
23-62 Steinway Street
Long Island City, NY 11105

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,

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

~~cc: Petitioner's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

CASE BOX LUNCH, INC.

DETERMINATION

for Redetermination of a Deficiency or
for Refund of Sales and Use Taxes under
Articles 28 and 29 of the Tax Law for
the Period March 1, 1971 through
February 28, 1974.

Applicant, Case Box Lunch, Inc., 23-62 Steinway Street,
Long Island City, New York 11105, has filed applications for
redetermination of a deficiency or for refund of sales and use
tax under Articles 28 and 29 of the Tax Law for the period March 1,
1971 through February 28, 1974. (File No. 90,150,541).

A small claims hearing was held before Joseph Marcus, Hearing
Officer, on September 15, 1976, at 10:45 A.M., at the offices of
the State Tax Commission, Two World Trade Center, New York, New
York. The applicant appeared by Ivan O. Bell, Manager. The Sales
Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of
counsel).

ISSUE

Whether the audit of the vendor's books and records and the
resultant findings were proper and correct.

FINDINGS OF FACT

1. Applicant, Case Box Lunch, Inc., filed sales and use tax returns for the period March 1, 1971 through February 28, 1974.
2. On November 6, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand No. 90,150,541 in the amount of \$5,155.90, plus penalties and interest.
3. The applicant, Case Box Lunch, Inc., timely filed an application for redetermination or for a refund.
4. The applicant, Case Box Lunch, Inc., was a vendor of box lunches. It sold these lunches mostly at industrial and business sites. An audit of the books and records was conducted by examiners from the Sales Tax Bureau. A deficiency was determined based on:
 - a. Disallowance of nontaxable sales;
 - b. Applicant, Case Box Lunch, Inc.'s, failure to state and charge sales tax separately;
 - c. Applicant, Case Box Lunch, Inc.'s, failure to charge and pay over sales tax on the sales of sodas where the total charge was less than \$1.00 (for periods prior to May 31, 1971).
5. Applicant, Case Box Lunch, Inc., indicated that it did not wish to dispute the matter of the assessment except that it wanted to be credited for \$89.90, an amount that the Sales Tax Bureau admitted was erroneously assessed due to a mathematical error.

6. Ivan O. Bell, manager of Case Box Lunch, Inc., testified that to the best of his recollection the principal was already paid.

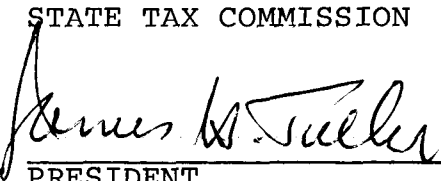
CONCLUSIONS OF LAW

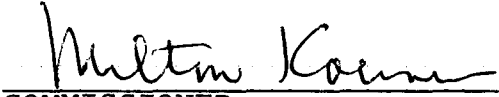
A. The results of the examination of the vendor's books and records and the resultant tax liability are correct except for the tax erroneously assessed in the amount of \$89.90.

B. That the determination is sustained except for the erroneous tax assessment of \$89.90, which the Sales Tax Bureau is directed to refund to the applicant, Case Box Lunch, Inc. It is further directed that the penalties be rescinded and interest at the statutory rate be imposed.

DATED: Albany, New York
January 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER