

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

INDUSTRIAL DIVISION

OF MECCA BROTHERS, 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 ~~XXXXXX~~ Period ~~(X)~~ :

February 28, 1971 through November 30, 1971.

State of New York  
County of Albany

Catherine Steele, 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 4th day of August, 1976, she served the within  
Notice of Determination by ~~(XXXXXX)~~ mail upon Industrial Division of

Mecca Brothers, Inc. ~~(XXXXXX)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Industrial Division of Mecca Brothers, Inc.  
2200 Waldon Avenue  
Buffalo, New York 14202

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 ~~(XXXXXX)~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

4th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
INDUSTRIAL DIVISION

OF MECCA BROTHERS, 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)~~ Period ~~(s)~~ :

February 28, 1971 through November 30, 1971.

State of New York  
County of Albany

Catherine Steele, 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 4th day of August, 1976, she served the within Notice of Determination by ~~Registered~~ mail upon Howard T. Saperston, Esq.(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Howard T. Saperston, Esq.  
Saperston, Wiltse, Day & Wilson  
815 Liberty Bank Building  
Buffalo, New York 14202  
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

4th day of August, 1976.

Catherine Steele

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

August 4, 1976

TELEPHONE: (518) **457-3850**

Industrial Division of Mecca Brothers, Inc.  
2200 Waldon Avenue  
Buffalo, New York 14202

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,

*David B. Coburn*  
David B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
INDUSTRIAL DIVISION OF MECCA BROTHERS 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	:	
February 28, 1971 through November 30, 1971.	:	

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Applicant, Industrial Division of Mecca Brothers Inc., 2200 Walden Avenue, Buffalo, New York 14225, applied 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 February 28, 1971 through November 30, 1971.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on September 10, 1974 before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Howard T. Saperston, Esq. and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (James Scott, Esq. of counsel).

#### ISSUE

When accounts receivable in 1971 were not collected in full could the taxpayer, Industrial Division of Mecca Brothers Inc., prorate sales tax previously collected and paid and receive credits and refunds.

FINDINGS OF FACT

1. The taxpayer, Industrial Division of Mecca Brothers Inc., timely filed New York State sales and use tax returns for the period February 28, 1971 through November 30, 1971.

2. A Notice of Determination of Sales Tax for the periods in issue was issued under notice number 90,729,070. After conference and discussion which treated with taxpayer's letter of September 10, 1973 dealing with 12 items, a new Notice of Determination of sales and use taxes and penalties for the period February 28, 1971 through November 30, 1971 was issued on January 4, 1974 against Industrial Division of Mecca Brothers Inc. under notice number 90,732,827.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax and demanded sales tax credits for sales tax collected and paid on credit sales where there had been reposessions.

4. The taxpayer asserted that where the full sales tax was collected and paid on a credit sale, where part of the sale price is uncollected, the seller should receive a refund or credit of tax proportionate to the ratio which the uncollected account bears to the total selling price.

5. The Sales Tax Bureau asserted that first monies received on an account receivable are applied to the sales tax due. When the amount of money received equals or exceeds the sales tax due, no credit is allowed against any remaining uncollectible portion of the account for sales tax purposes.

6. Credits of \$2,576.25 were denied and penalties and interest of \$732.00 asserted and notice #90,732,827 asserted deficiencies of tax, penalty and interest totaling \$3,308.25.

7. Taxpayer, Industrial Division of Mecca Brothers Inc., acted in good faith throughout this controversy.

CONCLUSIONS OF LAW

A. The first monies received by the taxpayer, Industrial Division of Mecca Brothers Inc., on an account receivable were applied to sales tax due. When the monies collected equaled or exceeded the sales tax, no sales tax credit was allowable against any remaining uncollectible portion of the account for sales tax purposes.

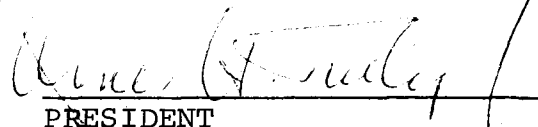
B. This rule was changed by Regulation 525.5 effective December 1, 1974. The regulation is not retroactive.

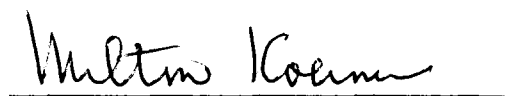
C. The taxpayer, Industrial Division of Mecca Brothers Inc., acted in good faith throughout this controversy and all penalties are cancelled.

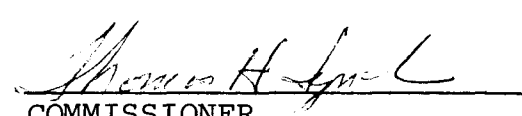
D. The deficiencies in sales tax are otherwise sustained.

DATED: Albany, New York  
August 4, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Industrial Division of Mecca Brothers, Inc.  
2200 Waldon Avenue  
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STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

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Inquiries concerning the computation of tax  
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Very truly yours,

Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

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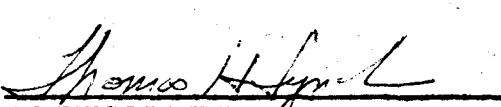
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