

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL SHEBAR

d/b/a FREEPORT UTILITIES CO.

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)~~ or Period(s)

6/1/68 through 8/31/70.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Donna Scranton, 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 10th day of September, 1976, she served the within

Notice of Determination by ~~(certified)~~ mail upon Paul Shebar d/b/a Freeport Utilities Co. ~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Paul Shebar  
d/b/a Freeport Utilities Co.  
40 North Main Street  
Freeport, New York 11520

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

10th day of September, 1976.

Donna Scranton

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

September 10, 1976

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

Paul Shebar  
d/b/a Freeport Utilities Co.  
40 North Main Street  
Freeport, New York 11520

Dear Mr. Shebar:

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: ~~Taxpayer's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
PAUL SHEBAR	:	
d/b/a FREEPORT UTILITIES CO.	:	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 June 1, 1968 through August 31,	:	
1970.	:	

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Applicant, Paul Shebar, d/b/a Freeport Utilities Co., at 40 North Main Street, Freeport, New York 11520, 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 June 1, 1968 through August 31, 1970.

The taxpayer made timely application for a formal hearing which was scheduled at the offices of the State Tax Commission at Two World Trade Center, New York, New York, on November 20, 1975 at 2:00 P.M. before Nigel G. Wright, Hearing Officer. The applicant submitted his case to the State Tax Commission based on the material in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUES

I. Was the applicant, Paul Shebar, d/b/a Freeport Utilities Co., entitled to a credit and a refund of sales taxes already paid on sales made on open account to customers whose accounts were subsequently found to be uncollectible?

II. Where customers on open account made payments undifferentiated with respect to particular sales, or the sales tax payable thereon, was the earliest payment received by the applicant, Paul Shebar d/b/a Freeport Utilities Co., to be considered first as payment of the entire sales tax due on all sales to that account?

FINDINGS OF FACT

1. Applicant, Paul Shebar, d/b/a Freeport Utilities Company (hereinafter "Freeport"), has sold gas and electric appliances at wholesale to building contractors since prior to August 1, 1965. Applicant, Freeport, timely filed New York State sales and use tax returns for the period June 1, 1968 through November 30, 1970. All sales taxes indicated were timely paid.

2. Applicant, Freeport, claimed a credit of \$754.78 on his sales tax return for the period ended November 30, 1968, based on applicant's write-off of bad debts.

3. A field audit was made on the accounts of applicant, Freeport, and on May 9, 1969 a Notice of Determination and Demand for Payment of Sales

and Use Tax Due was issued on Notice No. 90,704,259 for a tax of \$685.09 plus interest of \$15.84 for a total of \$700.93.

4. As a result of a further field audit for the period June 1, 1968 through August 31, 1970, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on July 29, 1971 under File No. 90,745,970 for a tax of \$282.62 plus penalty and interest of \$59.35, for a total of \$341.97. The additional tax demanded was due to disallowance by the Sales Tax Bureau of credit claimed by applicant, Freeport, on the sales tax return for the period ended February 28, 1970.

5. Applicant, Freeport, timely filed an application for revision of determination and asked that both determination No. 90,704, 259 and No. 90,745,970 be considered at the same formal hearing.

6. Audit of the applicant, Freeport's books and records for the period June 1, 1968 to August 31, 1970, found that the applicant maintained a complete double-entry set of books and supporting records. They were found to be accurate and were accepted by the Sales Tax Bureau.

7. The Sales Tax Bureau audit found no impropriety in the applicant, Freeport's determination of what accounts were uncollectible or when they became "bad debts". The applicant, Freeport, utilized Dun & Bradstreet ratings in extending credit and their law department for collection service.

Analysis of the customers' accounts for which credit was claimed verified that tax was reported on these sales; that collection action was fruitless in each case; and that there was a bad debt write-off.

8. Applicant, Freeport, applied payments on account by debtors to the first invoice amount owed on a "first-in, first-out" basis.

#### CONCLUSIONS OF LAW

A. That the State Tax Commission by statute is authorized 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 regulations. Section 1132(e) Article 28 of the Tax Law. (As added by Chapter 962, Laws of 1966).

B. That the vendor is required by the Tax Law, section 1132(a) to collect the sales tax when collecting the price of the sale. This sales tax applies to the entire sale, whether the price is in cash, or partly in an account receivable. The entire sales tax must be paid to the Sales Tax Bureau when the sales tax return for the current period is timely filed. Tax Law, section 1137(a).

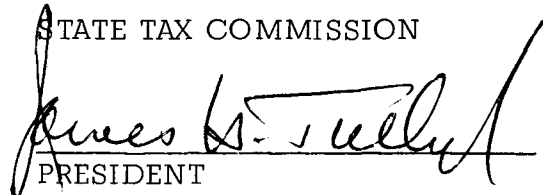
C. That during the period June 1, 1968 through August 31, 1970, it was assumed that the first cash received by a vendor was for the entire sales tax due on the sale. The Tax Law (section 1132(d)) explicitly provided that a different rule could be adopted only by a regulation of the Tax Commission. Regulation 525.5 then in effect which provided for uncollectible accounts under

section 1132(e) of the Tax Law 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 collects from the purchaser. The applicant has not shown such a situation existed in this case.

D. That the penalties on the determinations are abated. Interest shall be charged in accordance with the Tax Law. The application of Paul Shebar, d/b/a Freeport Utilities Company is otherwise denied.

DATED: Albany, New York  
September 10, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER