

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SACHS NEW YORK, 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 and 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
September 1, 1969 to February 28, 1973.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December , 1978, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Sachs New York, Inc.


~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sachs New York, Inc.
330 Bruckner Boulevard
Bronx, New York 10454

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

13th day of December , 1978.





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State of New York
County of Albany

John Huhn , 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 13th day of December , 1978, ~~she~~ served the within
Notice of Determination by ~~(represented)~~ mail upon John Trubin,
Mark Ellman and
Allen Essner
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John Trubin, Mark Ellman and Allen Essner, Esqs.
Trubin Sillcocks Edelman & Knapp
375 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

13th day of December , 1978.

At Wacker

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

December 13, 1978

**Sachs New York, Inc.
330 Bruckner Boulevard
Bronx, New York 10454**


Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Michael Alexander
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 26, 1977 at 9:00 A.M. Applicant appeared by Trubin, Sillcocks, Edelman, & Knapp (John Trubin, Mark Ellman, and Allen Essner, Esqs., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, and Irving Atkins, Esqs., of counsel).

ISSUES

- I. Whether applicant took proper credits with regard to bad debts on its sales tax returns.
- II. Whether applicant was permitted to make installment payments of sales tax on installment plan sales.

FINDINGS OF FACT

1. On November 21, 1973 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Sachs New York, Inc., for the period September 1, 1969 to February 28, 1973 in the amount of \$589,498.39, plus penalty and interest of \$107,910.98, for a total due of \$697,409.37.

2. Applicant, Sachs New York, Inc., is a corporation that operated a chain of retail furniture stores throughout New York City during the periods in issue. All New York State sales tax returns for each of said periods were timely filed and the amounts stated to be due were duly paid.

3. Prior to August 1, 1965 (the date of the imposition of the New York State sales tax), applicant, Sachs New York, Inc., was permitted (pursuant to the New York City Sales Tax Statue and Article 41 of the Rules of Regulation promulgated thereunder) to take a deduction on its New York City sales tax returns for uncollectible installment sales. Subsequent to August 1, 1965, applicant, Sachs New York, Inc., claimed deductions for uncollectible installment sales on its New York sales tax returns. The New York State Sales Tax Bureau did not permit bad debt deductions to be taken in cases where payments received by applicant on account equalled or exceeded the sales tax due on the full sales price. Sachs New York, Inc. always required a down payment from the installment purchaser, which at least equalled the full sales tax. (Page 3 of Department's Exhibit "D").

4. During the period in issue and all prior periods, applicant, Sachs New York, Inc. (initis New York State sales tax returns) followed the New York City sales tax regulation, i.e., Article 41, CCH New York Tax Reports, Paragraph 163-214, which 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."

5. Applicant, Sachs New York, Inc., offered no documentary or other substantial evidence to show that it would lose money by being required to pay New York State more than was collected from applicant's uncollectible accounts.

6. During the periods in issue and subsequent to them, applicant, Sachs New York, Inc., cooperated with the Sales Tax Bureau and acted in good faith.

CONCLUSIONS OF LAW

A. That the New York State Tax Commission is authorized by statute to exclude from taxable receipts or to refund sales taxes already paid on such amounts, amounts representing sales where the charge has been ascertained to be uncollectible and to provide for the same by its regulations within the meaning and intent of 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. Section 1137 of the Tax Law provides that total sales tax due must be paid when the sales tax return for the current period is timely filed.

C. That the New York State Tax Commission may provide by regulation that the sales tax upon receipts from sales on the installment plan may be paid on the amount of each installment and on the date when such installment is due, in accordance with section 1132(a) of the Tax Law. However, section 525.5, TITLE 20 (Official Compilation of Codes, Rules and Regulations of the State of New York) then in effect, provided credits for uncollectible accounts under section 1132(e) of the Tax Law. It was considered that such accounts shall reduce gross sales only where the vendor would other-

wise lose money by being required to pay to the State of New York more than he collected from the purchaser. Applicant, Sachs New York, Inc., has not shown such a situation to exist. (Matter of Abraham and Straus , A Division of Federated Department Stores, Inc., State Tax Commission, June 14, 1977).

D. That the application of Sachs New York, Inc. is granted to the extent that interest in excess of the minimum interest as well as the penalty imposed pursuant to section 1145(a) of the Tax Law, are waived. That the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Tax Due issued November 21, 1973, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER