

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STARLITE CATERERS, 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 ~~XXXXXX~~ Period(s)  
June 1, 1967 - May 31, 1970.

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 2nd day of October, 1978, she served the within  
Notice of Determination by ~~certified~~ mail upon Starlite Caterers, Inc.

~~XXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Starlite Caterers, Inc.  
58-45 193rd Street  
Flushing, New York

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 ~~(representation of the)~~ petitioner.

Sworn to before me this

2nd day of October, 1978

John Huhn

W. Walker

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STARLITE CATERERS, 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(s) :  
June 1, 1967 - May 31, 1970.

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 2nd day of October , 1978 , she served the within  
Notice of Determination by ~~XXXXXXXXXX~~ mail upon Seymour Temkin, CPA

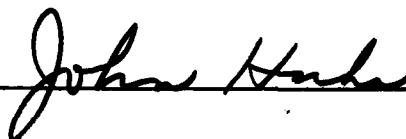
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Seymour Temkin, CPA  
189 Montague Street  
Brooklyn, New York 11201

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

2nd day of October , 19 78

  
\_\_\_\_\_

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STARLITE CATERERS, 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) or~~ Period(s) :  
June 1, 1967 - May 31, 1970.

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 2nd day of October , 19 78, she served the within  
Notice of Determination by (~~registered~~) mail upon Louis Berland

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Louis Berland  
1223 East 56th Street  
Brooklyn, New York

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

2nd day of October , 19 78

V. Walker

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

October 2, 1978

**Starlite Caterers, Inc.**  
**38-43 193rd Street**  
**Flushing, New York**

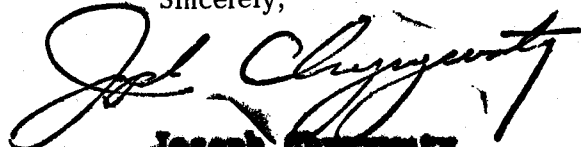
**Gentlemen:**

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 & 1143** 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,

  
**Joseph Chyrcywy**  
**Hearing Examiner**

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 :  
STARLITE CATERERS, 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 June 1, 1967 through May 31, :  
1970. :

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Applicant, Starlite Caterers, Inc., 58-45 193rd Street, Flushing, New York, 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 June 1, 1967 through May 31, 1970 (File No. 00480).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 2, 1977 at 9:15 A.M. Applicant appeared by its president, Louis Berland, and by Seymour Temkin, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether certain services provided by applicant as part of a catered function are subject to sales tax.

II. Whether the penalties imposed by the Sales Tax Bureau on the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 29, 1971 should be waived.

FINDINGS OF FACT

1. Applicant, Starlite Caterers, Inc., filed New York state and local sales and use tax returns for the period June 1, 1967 through May 31, 1970.

2. On January 29, 1971 as a result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Starlite Caterers, Inc. for taxes due of \$12,158.04, plus penalty and interest of \$3,381.46, for a total due of \$15,539.50.

3. Applicant, Starlite Caterers, Inc., is a caterer which, in addition to preparing all food and drink, furnishes waiter service. Other optional services are also available. These optional services include French service and rolling bar service. French service provides for additional waiters for food service. Rolling bar service provides for table-to-table beverage service. The contract between applicant and customer separately states all charges for such services. All catering services are performed at the Fresh Meadows Jewish Center in Queens, New York.

4. The audit conducted by the Sales Tax Bureau consisted of an analysis of sales for the test period June 1, 1969 through August 31, 1969. Non-taxable sales in the amount of \$20,530.00 were disallowed for the test period. This represented 63 1/2% of non-taxable sales reported. The 63 1/2% disallowance was applied to non-taxable sales

reported for the audit period, which resulted in additional taxable sales of \$225,624.00 and additional tax due of \$12,082.20. Of the total amount disallowed for the test period, \$15,192.00 were charges for French service, rolling bar service and fees paid for the temple, rabbi, cantor and soloist. The Sales Tax Bureau determined that all charges made by a caterer are subject to tax, except for separately stated tips or gratuities. The other items on which the assessment was based are not at issue here.

5. Applicant's charges made for French service and rolling bar service were tips for the additional waiters who were necessary to perform these services. The contracts provide for a \$2.00 per person tip for the normal waiter service. There is an additional charge of \$1.00 per person for French service and for rolling bar service.

6. All monies received for French service and rolling bar service were paid over in full to the waiters.

7. Applicant did not charge the customer for the use of the temple. The fees it charged for rabbis, cantors, and soloists were paid over in full, by separate check, to the Temple as separate payments to be made to the professional personnel involved in the religious service.

8. Applicant contended that the charge for the services of Kashruth supervisors were not subject to tax. However, the audit assessment did not include these charges, since applicant's records disclosed that tax was collected on these charges and included on the sales tax returns filed by applicant.

9. That applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That although not specifically designated as such, the monies received from French service and rolling bar service subsequently paid out in full to the waiters, constituted tips or gratuities and are, therefore, not subject to tax.

B. That monies received by applicant from customers in payment of fees for rabbis, cantors, and soloists are not subject to tax, within the meaning and intent of sections 1105(d)(1) and 1101(b)(3) of the Tax Law. (Matter of Ocean Catering Corp., State Tax Commission, December 29, 1970.)

C. That the tax collected on the services rendered by Kashruth supervisors was correctly reported, in accordance with section 1137 of the Tax Law.

D. That the penalties imposed pursuant to section 1145(a) of the Tax Law are cancelled.

E. That the application of Starlite Caterers, Inc. is granted to the extent indicated in Conclusions of Law "A", "B" and "D", above; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated January 29, 1971 and that, except as so granted, the application is in all other respects denied.

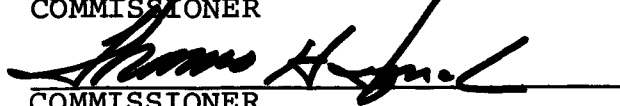
DATED: Albany, New York

October 2, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
TAX APPEALS BUREAU

TO Miss Davis, .....

Please file.

Joseph Chyrywaty

M-75 (5/76)



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

*Starlite Caterers,  
Inc.*

JAMES H. TULLY JR., PRESIDENT  
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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,

  
**Joseph Chyzywaty  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

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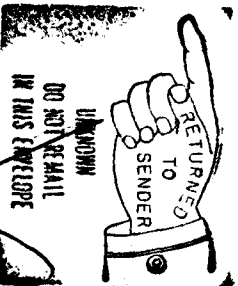
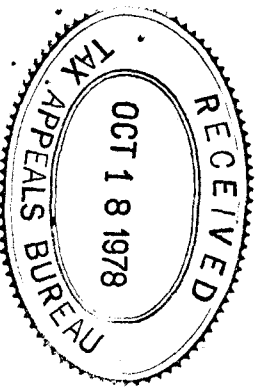
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

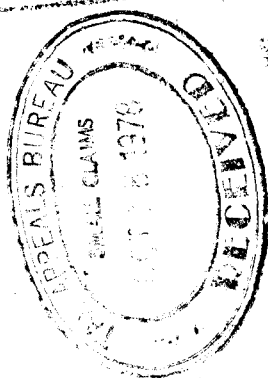
ALBANY, N. Y. 12227



Louis Berland  
1223 East 56th Street  
Brooklyn, New York

Moved

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STATE OF NEW YORK

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DATED: Albany, New York  
October 2, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
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