

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STATE DEPARTMENT STORE, 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 (X) :
September 1, 1972 through November 30, 1975.

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 24th day of April , 1978, ~~she~~ served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon State Department
Store, Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: State Department Store, Inc.
904 Prospect Avenue
Bronx, 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~~
~~XXXXXX~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

24th day of April , 1978

[Signature]

John Huhn



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

April 24, 1978

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

**State Department Store, Inc.
904 Prospect Avenue
Bronx, 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 & 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,

**Joseph Chyrywat
Hearing Examiner**

cc: ~~Taxing Bureau's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
STATE DEPARTMENT STORE, 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 September 1, 1972 through	:	
November 30, 1975.	:	

Applicant, State Department Store, Inc., 904 Prospect Avenue, Bronx, 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 September 1, 1972 through November 30, 1975 (File No. 15974).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1977 at 1:15 P.M. Applicant appeared by Stanley K. Gaines, president. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the results of the examination of applicant's books and records by the Sales Tax Bureau for the period September 1, 1972 through November 30, 1975 properly reflected applicant's additional sales tax liability.

FINDINGS OF FACT

1. On June 25, 1976 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, State Department Store, Inc., for the period September 1, 1972 through November 30, 1975 in the amount of \$5,319.06, plus penalty and interest of \$2,121.39, for a total due of \$7,440.45.

2. During the period at issue, applicant operated a retail clothing store specializing in women's clothing. The applicant did not maintain a general ledger or other books of original entry, nor were cash register tapes, sales slips or purchase invoices kept. Sales tax returns were prepared by an analysis of the checking account.

3. A comparison of the applicant's sales tax returns and Federal tax returns for the period June 1, 1973 through May 31, 1975 indicated that gross sales per sales tax returns were understated by \$18,825.00.

4. The Sales Tax Bureau's auditor analyzed bank statements for the entire audit period and found additional taxable sales of \$68,802.00. The parties agreed that the additional taxable sales were actually loans to the business which had been deposited in the checking account. However, the auditor considered the loans to be sales for the following reasons: (1) there was no agreement to cover the third party loans; (2) although based in Pennsylvania, the

lender was a related party and transactions were not at arms-length; (3) the Federal income tax returns of applicant showed no record of the loans as a liability; (4) no part of the loans had been repaid, nor was there a formal or informal plan to repay in the future; (5) applicant's accounting system lacked such internal controls as would prevent swapping of funds or lapping.

5. The auditor also determined that purchases of fixed assets in the amount of \$1,621.00 were made without payment of sales tax.

CONCLUSIONS OF LAW

A. That the computation of additional taxable sales by the Sales Tax Bureau's auditor was not based on such information as may have been available within the meaning and intent of section 1138(a) of the Tax Law and is, therefore, erroneous.

B. That the applicant's additional taxable sales are \$18,825.00, the difference between gross sales per Federal tax return and sales tax returns as indicated in Finding of Fact "5," above.

C. That the application of State Department Store, Inc. is granted to the extent indicated in Conclusion of Law "B," that the

Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 25, 1976, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER