

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Eldorado Furniture & Appliance Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 9/1/69-8/31/72. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 16th day of November, 1979, he served the within notice of Determination by mail upon Eldorado Furniture & Appliance Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eldorado Furniture & Appliance Inc.
860-66 Longwood Ave.
Bronx, NY 10459

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

Sworn to before me this
16th day of November, 1979.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Eldorado Furniture & Appliance Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 9/1/69-8/31/72. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 16th day of November, 1979, he served the within notice of Determination by mail upon Herbert Granoff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020

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
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 16, 1979

Eldorado Furniture & Appliance Inc.
860-66 Longwood Ave.
Bronx, NY 10459

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) 1139 & 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
ELDORADO FURNITURE AND APPLIANCE, 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, 1969 to August 31, :
1972. :

Applicant, Eldorado Furniture and Appliance, Inc., 860-66 Longwood Avenue, Bronx, New York 10459, 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, 1969 to August 31, 1972 (File No. 14235).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1978 at 1:30 P.M. Applicant appeared by Herbert Granoff, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether applicant is entitled to a tax credit or refund for sales taxes paid in full on sales to a buyer who subsequently defaults in payment and which amount becomes uncollectible.

FINDINGS OF FACT

1. On January 11, 1973, applicant, Eldorado Furniture and Appliance, Inc., consented to extend the period of limitation for assessment of sales and use taxes for the period September 1, 1969 through August 31, 1972 to December 20, 1973.

2. On November 27, 1973, applicant consented to extend the period of

limitation for assessment of sales and use taxes for the period September 1, 1969 through August 31, 1972 to December 20, 1974.

3. On November 22, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to applicant for the period September 1, 1969 to August 31, 1972. Said Notice was for sales tax due of \$88,750.94, plus penalty and interest of \$40,962.18, for a total of \$129,713.12.

4. The Sales Tax Bureau has reduced the sales tax asserted due in the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued to applicant on November 22, 1974 to \$63,983.50. This amount of tax has been further reduced by granting a \$4,701.22 allowance for reductions which applicant had made in sales prices. Of the remaining asserted tax deficiency of \$59,282.28, applicant agrees to \$11,606.92 and disagrees with \$47,675.36.

5. Applicant is a retail vendor of furniture and appliances. It makes a great many of its retail sales on credit which it extends to customers. Each credit transaction is governed by a retail installment contract which provides that title to the sale goods remains with applicant until the goods are paid for in full. After a modest down payment is made, the goods are delivered to the customer.

6. Applicant reported the sale in full in the taxable quarter within which it made the sale and remitted the full sales tax on the entire contract sales price, regardless of the amount it had received from the customer.

7. Subsequently, if the payments were not made and the receivable was determined to be uncollectible, applicant claimed a deduction from taxable sales in the quarter in which the debt became uncollectible. The deduction was in the amount of the uncollectible debt and did not include any finance or similar charges.

CONCLUSIONS OF LAW

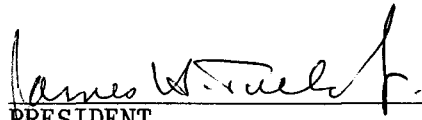
A. That applicant, Eldorado Furniture and Appliances, Inc., is entitled to a tax credit, or refund for sales taxes paid in full on sales to a buyer who subsequently defaults in payment and which amount becomes uncollectible. Abraham & Straus v. Tully, 47 N.Y.2d 207.

B. That, the application of Eldorado Furniture and Appliance, Inc. is granted to the extent that the tax due is reduced to \$11,606.92 (see Finding of Fact "4"), plus penalty and interest, but that except as so granted, the application is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is otherwise sustained.

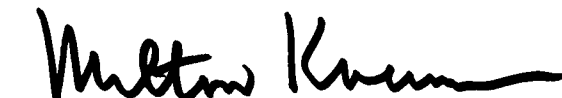
DATED: Albany, New York

STATE TAX COMMISSION

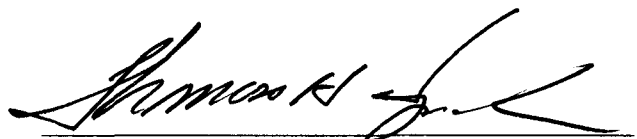
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PRESIDENT



COMMISSIONER



COMMISSIONER

State Tax Commission

Paul B. Coburn

Eldorado Furniture and Appliance, Inc.

The State Tax Commission issued a decision in the above matter on November 10, 1979 revising the tax due to \$11,606.96 plus penalty and interest. A copy of the decision is attached.

On December 5, 1979 the taxpayer's attorney wrote to Commissioner Tully requesting that the decision be amended to waive the penalty and interest in excess of the minimum.

The above sum of \$11,606.96 was conceded to be due by the taxpayer at a conference held in January 1977 and was paid. The Withdrawal of Petition Form indicates that minimum interest was to be charged. Also note page 9 of the record. The taxpayer was successful with reference to the balance of the dispute.

While it is the general policy of the Tax Commission not to amend decisions after they have been issued, it is my recommendation that an exception be made in this case as the hearing officer apparently inadvertently failed to take the withdrawal agreement into consideration.

Please indicate on the lower left hand portion of this memorandum whether you wish to grant the relief requested.

PAUL B. COBURN
Secretary to the State Tax Commission

January 2, 1980
Attachment

Commissioner Tully

Commissioner Koerner

Commissioner Lynch

January 21, 1980

Herbert Granoff, Esq.
8 Wilshire Drive
Great Neck, NY 11020

RE: ELDORADO FURNITURE & APPLIANCE CO., INC.
DETERMINATION OF THE TAX COMMISSION
DATED NOVEMBER 16, 1979

Dear Mr. Granoff:

Your letter of December 5, 1979 with reference to the above entitled matter addressed to Commissioner James H. Tully, Jr. was forwarded to the State Tax Commission for consideration.

The State Tax Commission has decided to grant the relief that you requested and to amend the decision of November 16, 1979 so as to waive the penalty and the interest in excess of the minimum.

The file is being returned to the Tax Appeals Bureau for processing in accordance with the Commission's decision.

Sincerely,

PAUL B. COBURN
Secretary to the State Tax Commission

PBC:mac

cc: John Sollecito, Director
Tax Appeals Bureau

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

RESEARCH REPORT

NO. 1000

BY

ROBERT M. HAYES

AND

WILLIAM H. RAY

1955



TO: State Tax Commission

FROM: Paul B. Coburn

SUBJECT: Eldorado Furniture and Appliance, Inc.

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PAUL B. COBURN
Secretary to the State Tax Commission

January 2, 1980
Attachment

Commissioner Tully

Commissioner Koerner

Commissioner Lynch

HERBERT GRANOFF

ATTORNEY AT LAW

8 WILSHIRE DRIVE
GREAT NECK, N. Y. 11020

(516) 487-7130

December 5, 1979

Hon. James H. Tully, President
State Tax Commission
Albany, New York 12227

Re: Eldorado Furniture & Appliance Co., Inc.
Determination of the Tax Commission
dated November 16, 1979 - Sales Tax

Dear Sir:

A formal hearing was held on the above matter on June 20, 1978. The sole remaining issue involved uncollectible sales accounts receivable. The issue was decided in favor of my client. (Abraham & Strauss v. Tully)

Fact "4" and Conclusion of Law "B" refers to an amount of \$11,606.92 part of the Notice of Determination and Demand for Payment. This tax was conceded to be due at a preliminary hearing held January 25, 1977 and payment therefore was made in April, 1977. This item was withdrawn from the Petition together with a reduced tax of \$4701.22 leaving but one issue (uncollected receivables from sales) for Determination. I enclose copy of Withdrawal of Petition and Discontinuance of case in respect to all but the one issue.

You will note at the bottom of the enclosure ****Minimum Statutory interest contingent upon satisfactory payment.** Payment of the agreed tax was duly made and the taxpayer awaited a statement from the Sales Tax Bureau computing the penalty and the minimum interest due thereon but I am now informed no such computation was received and hence was not paid.

As the \$11,606.92 was withdrawn from the Petition before the Formal Hearing, I cannot account for the reason why it appears at all in the Determination.

In order to clarify the effect of paragraph "B" of the Conclusions of Law, I was referred to Mr. A. Rubinstein of the Law Bureau. This morning I was informed that, "plus penalty and interest", refers to Statutory interest rather than "Minimum Statutory Interest" cited in the Withdrawal of Petition referred to. I cannot believe the

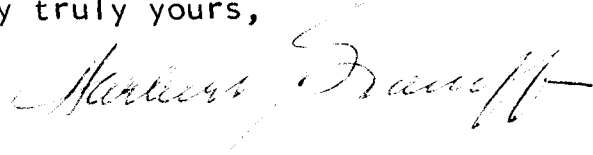
HERBERT GRANOFF

Commission intends to violate an earlier written understanding that only the Minimum Statutory Interest is due if agreed tax of \$11,606.92 is paid.

This case is a model of taxpayer cooperation throughout its history. The taxpayer has been put to considerable legal expense on an issue so decisively decided by the Court of Appeals against the Commission. Eldorado is a small business taxpayer in the South Bronx. He can ill afford to bear added costs.

In view of the foregoing, may I receive your assurance that payment of the "Minimum Statutory Interest" agreed upon earlier with Mr. Welch of the Tax Appeals Bureau is, in fact, the interest intended in Paragraph "B", and the amount thereby due will be paid forthwith and proceeding under Article 78 waived.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Herbert Granoff". The signature is written in dark ink and is positioned to the right of the typed name "Herbert Granoff".

HG/sm
Enc.

State Tax Commission

Paul B. Coburn

Eldorado Furniture and Appliance, Inc.

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PAUL B. COBURN
Secretary to the State Tax Commission

January 2, 1980
Attachment

Commissioner Tully

Commissioner Koerner

Commissioner Lynch

Dear Mr. [Name],

I have received your letter of the [Date] regarding [Subject].

The information you provided is being reviewed by the relevant departments.

We will contact you again once a final decision has been reached.

Thank you for your patience and understanding.

Sincerely,
[Signature]

[Date]

[Address]

[City]

[State]