

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDSOL OUTFITTERS, LTD.

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)
March 1, 1966 through February 5, 1969

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 15th day of March, 1979, he served the within
Notice of Determination by ~~(unregistered)~~ mail upon Edsol Outfitters, Ltd.

~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edsol Outfitters
119-01 Liberty Avenue
Richmond Hill, NY 11419

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)~~
~~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

15th day of March, 1979.

Mary J. Papinian

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDSOL OUTFITTERS, LTD.

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)~~ Period(s) :
March 1, 1966 through February 5, 1969

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 15th day of March , 1979 , she served the within
Notice of Determination by (~~certified~~) mail upon Gerald Murray, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Gerald Murray, Esq.
12 Richbourne Lane,
Melville, L.I., NY 11746

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

15th day of March , 1979.

Marilyn J. Papneau

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

March 15, 1979

Edsol Outfitters, Ltd.
119-01 Liberty Avenue
Richmond Hill, NY 11419

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: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
EDSOL OUTFITTERS, LTD.	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 & 29 of the Tax Law for the	:	
Period March 1, 1966 through February 5,	:	
1969.	:	

Applicant, Edsol Outfitters, Ltd., 1651 Broadway, Brooklyn, 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 March 1, 1966 through February 5, 1969 (File No. 00094).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1978 at 9:15 A.M. Applicant appeared by Gerald Murray, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

- I. Whether the sale of a leasehold constituted a bulk sale.
- II. Whether applicant notified the State Tax Commission of a proposed sale, as required by section 1141(c) of the Tax Law.

III. Whether the release of escrow funds to the Internal Revenue Service relieved applicant of the liability for the State Tax Commission's claim for taxes due from the seller.

IV. Whether the State Tax Commission was estopped from making a claim against applicant because of laches.

FINDINGS OF FACT

1. R & S Casuals, Inc. operated a retail clothing store at 119-01 Liberty Avenue, Richmond Hill, New York, until February 5, 1969.

2. On February 27, 1969, an agreement was executed between R & S Casuals, Inc., as the seller, and Edsol Outfitters, Ltd., as the purchaser, wherein the seller agreed to sell, transfer and assign to the purchaser, the leasehold and security deposit for the premises located at 119-01 Liberty Avenue, Richmond Hill, New York. The agreement further provided that "...It is understood and agreed that the only asset being sold pursuant to this agreement is the aforesaid leasehold." The sales price was \$5,000.00 and the transfer took place on May 4, 1969.

3. Neither the purchaser nor the seller notified the Sales Tax Bureau of the proposed sale, transfer and assignment, as required by section 1141(c) of the Tax Law. A Notification of Sale, Transfer or Assignment in Bulk was prepared by a representative of the Sales Tax Bureau on July 26, 1971. On July 27, 1971, the Sales Tax Bureau sent notices to the purchaser and to the escrow agent of a possible claim for New York state and local sales and use taxes due from the seller.

4. On August 18, 1971, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period March 1, 1966 through February 5, 1969 in the amount of \$5,000.00. The Sales Tax Bureau had previously determined taxes due from the seller, R & S Casuals, Inc., in the amount of \$13,503.47. However, in accordance with section 1141(c) of the Tax Law, the purchaser's liability was limited to the purchase price of the leasehold.

5. On August 13, 1969, the Internal Revenue Service issued a Notice of Levy to applicant in the amount of \$6,656.14, which was for taxes due from R & S Casuals, Inc. A Notice of Final Demand was served on applicant by the Internal Revenue Service on December 1, 1970. The escrow deposit of \$4,722.75 was paid to the Internal Revenue Service under protest on May 19, 1971.

6. Applicant contended that by returning correspondence and tax returns of R & S Casuals, Inc. to the Sales Tax Bureau, and by noting thereon that R & S Casuals was no longer in business, it had complied with the notification requirements of section 1141(c) of the Tax Law.

7. Applicant also contended that the State took two years to give notification of its claim against R & S Casuals, Inc. and then an additional six years to hear the matter; therefore, it argued that the state is estopped from taking any action against Edsol Outfitters, Ltd.

CONCLUSIONS OF LAW

A. That a leasehold is a business asset and the sale thereof constitutes a bulk sale within the meaning and intent of section 1141(c) of the Tax Law.

B. That applicant failed to give the State Tax Commission timely and proper notification of the proposed sale as required by section 1141(c) of the Tax Law; therefore, applicant is liable for taxes determined to be due from the seller, not to exceed the purchase price or fair market value of the assets sold.

C. That the Tax Commission gave notice to the purchaser of the state's claim for taxes due from R & S Casuals, Inc. within the time limits prescribed in section 1141(c) of the Tax Law. The payment to the Internal Revenue Service does not affect applicant's liability.

D. That the State Tax Commission is not estopped from making a claim against applicant. A state agency or body cannot be estopped to assert its governmental power as to acts within its governmental capacity.

E. That the application of Edsol Outfitters, Ltd. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 18, 1971 is sustained.

DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER