

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Schechter's Credit Jewelers, Inc. :

AFFIDAVIT OF MAILING

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 3/1/70 - 2/28/73. :

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 14th day of December, 1979, he served the within notice of Determination by mail upon Schechter's Credit Jewelers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Schechter's Credit Jewelers, Inc.
69 Graham Ave.
Brooklyn, NY 12206

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
14th day of December, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Schechter's Credit Jewelers, 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 3/1/70 - 2/28/73. :

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 14th day of December, 1979, he served the within notice of Determination by mail upon Hyman Rappaport 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. Hyman Rappaport
663 Fifth Ave.
New York, NY 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
14th day of December, 1979.

Joanne Knapp

J. Vredenburg

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

December 14, 1979

Schechter's Credit Jewelers, Inc.
69 Graham Ave.
Brooklyn, NY 12206

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:

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
Hyman Rappaport
663 Fifth Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
SCHECHTER'S CREDIT JEWELERS, 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 March 1, 1970 through February 28, :
1973.

Applicant, Schechter's Credit Jewelers, Inc., 69 Graham Avenue, Brooklyn, New York 12206, 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, 1970 through February 28, 1973 (File No. 11486).

A small claims hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 8, 1978 at 9:15 A.M. Applicant appeared by Hyman Rappaport, CPA. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether deductions taken by applicant for bad debts on installment sales were properly disallowed by the Sales Tax Bureau.

II. Whether the Sales Tax Bureau's disallowance of certain sales which applicant claimed were nontaxable was proper.

FINDINGS OF FACT

1. During the period at issue, applicant, Schechter's Credit Jewelers, Inc., operated a retail jewelry, furniture and appliance store in Brooklyn, New York. It sold goods on both the cash basis and on the installment basis.

2. Applicant filed New York State and local sales and use tax returns for the period March 1, 1970 through February 28, 1973, reporting gross sales of \$1,576,507.00, taxable sales of \$1,533,189.00, and tax remitted thereon of \$101,410.42.

3. A field audit of applicant's books and records for this period disclosed that in one quarter of each year during the audit period, applicant had deducted bad debts from sales which it reported on the sales tax returns. The auditor disallowed such deductions on the grounds that applicant was on an installment basis for collections and would receive a down payment, which would more than cover the sales tax charged on each transaction. The total bad debts disallowed for the audit period were \$77,004.69.

Moreover, a test of nontaxable sales was made for the quarter December 1, 1972 through February 28, 1973, which disclosed that applicant could not substantiate two nontaxable sales which amounted to \$12.67, out of total nontaxable sales claimed for the quarter of \$4,524.00. The auditor calculated a percentage of disallowance of .0028 and applied same to nontaxable sales claimed for the audit period. This amounted to disallowed nontaxable sales of \$121.30 for the audit period.

The audit also verified that applicant was on an accrual basis of reporting sales, although on an installment basis for sales collections.

On October 31, 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 for \$5,197.17, plus penalty and interest.

4. At a post-assessment conference on May 14, 1974, applicant submitted its ledger cards for its fiscal year July 1, 1972 through June 30, 1973. The cards disclosed that 9.1 percent of installment sales were not followed by payments from customers. This figure was applied to the entire audit period and the assessment was reduced by 9.1 percent, from \$5,197.17 to \$4,724.22, plus penalty and interest.

5. Applicant's practice was to write-off bad debts once each year, at the close of the fiscal year. Applicant would do so only where there had been no payment for five months prior to the write-off.

6. In addition to the sales which were not followed by payments from customers, applicant contended that many of the bad debt accounts involved additional sales ("add-ons"), where a customer would purchase an additional item on credit before completing payment of the balance due on the first item. Applicant claimed that even if payments were made by a customer after the additional item had been purchased, payments received after the second sale should be attributed only to the first sale, until the first item had been paid for in full. Bad debts arising out of "add-on" sales where no payments were made amounted to \$9,809.23 for the fiscal year ending June 30, 1973. Total bad debts for the same fiscal year amounted to \$37,498.26.

7. The Sales Tax Bureau maintained that during the period at issue the first monies received by a vendor must first be applied to the sales tax due on the sale.

CONCLUSIONS OF LAW

A. That the applicant is entitled to a tax credit or refund for sales taxes paid in full on installment sales where the purchaser defaults in payment and the amount becomes uncollectible (Abraham & Straus v. Tully, 47 N.Y.2d 207).


B. That even though the percentage of disallowed nontaxable sales was quite small, applicant did not offer documentary or other satisfactory evidence to show that the disallowance of such sales was improper; accordingly, the additional tax based on the disallowed nontaxable sales of \$121.30 is sustained.

C. That the application of Schechter's Credit Jewelers, Inc. is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 31, 1973; and that, except as so granted, the application is in all other respects denied.

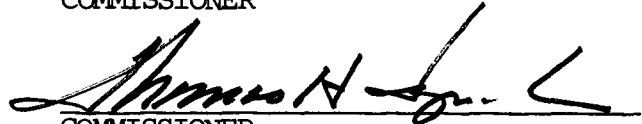
DATED: Albany, New York

DEC 14 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER