STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Michaels Furniture, 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 9/1/73 - 8/31/76. :

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 November, 1980, he served the within notice of Decision by mail upon Michaels Furniture, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michaels Furniture, Inc.
65 10 Myrtle Ave.
Brooklyn, NY 11227

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 November, 1980.

Deborah A Bank

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Michaels Furniture, 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 9/1/73 - 8/31/76. :

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 November, 1980, he served the within notice of Decision by mail upon Milton Coleman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton Coleman
Horowitz, Coleman, Waldman & Co.
98 Cuttermill Rd.
Great Neck, NY 11021

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 November, 1980.

Deborah A Bant

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

November 14, 1980

Michaels Furniture, Inc.
65 10 Myrtle Ave.
Brooklyn, NY 11227

Gentlemen:

Please take notice of the Decision 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
Milton Coleman
Horowitz, Coleman, Waldman & Co.
98 Cuttermill Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MICHAELS FURNITURE, INC.	:	DECISION
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, 1973 through August 31, 1976.	:	

Petitioner, Michaels Furniture, Inc., 65-10 Myrtle Ave., Brooklyn, New York 11227, filed a petition 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, 1973 through August 31, 1976 (File No. 20763).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 24, 1980 at 2:45 P.M. and was continued on April 22, 1980 at 9:15 A.M. Petitioner appeared by Milton Coleman, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the audit procedures and tests employed by the Audit Division in an examination of petitioner's books and records accurately determined additional sales taxes due for the period September 1, 1973 through August 31, 1976.

FINDINGS OF FACT

1. Petitioner, Michaels Furniture, Inc., operated a furniture store located at 65-10 Myrtle Ave., Brooklyn, New York. Petitioner did not inventory a large variety of furniture, but rather sales were primarily generated from catalogs. The average time that elapsed from the date of the order to delivery was three to six months.

2. On August 24, 1977, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period September 1, 1973 through August 31, 1976 for taxes due of $14,350.41, plus penalty and interest of $7,485.07, for a total of $21,835.48.

3. Petitioner executed a consent extending the time within which to issue an assessment of sales and use taxes for the periods at issue to December 20, 1977.

4. On audit, the Audit Division found that the gross sales recorded in petitioner's books and records were $336,692.00 greater than taxable sales reported on sales tax returns filed for the periods at issue. Based on a test period of June 1, 1976 through August 31, 1976, the Audit Division found a discrepancy of $22,502.00 between gross sales per books and taxable sales reported for said period. The petitioner substantiated $10,092.00 in non-taxable sales which resulted in disallowed non-taxable sales of 55.15 percent for the test period. This percentage was applied to excess gross sales per books of $336,692.00 to determine additional taxable sales of $185,684.00 and tax due thereon of $14,350.41.

5. Petitioner argued that the difference in gross sales recorded in the books and the gross sales reported on the sales tax returns was due to the method in which it recorded the deposits, sales tax, delivery charges, refunds to customers and non-taxable sales. Petitioner recorded on its books all monies received (initial deposits, payments on account and final payments) as gross sales on the day which the monies were received.

For sales tax purposes, petitioner recorded gross sales and taxable sales in full on the day final payment was received, which was also when the total sales tax was collected. The gross sales recorded on its books and

those reported on its returns would not agree for any one period because a partial payment which appeared in gross sales in one period would not appear as a taxable sale until the period in which final payment was received (which is also the time delivery was made).

6. Petitioner requires an initial deposit on each customer order and final payment must be received prior to the delivery of any merchandise. The initial deposit, subsequent payments on account and final payments are recorded in gross sales the day on which the monies are received since petitioner does not maintain accounts receivable controls or subsidiaries.

Petitioner accounts for its daily receipts as follows: All monies received are rung on the cash register. An invoice is prepared for any new orders and the customer is credited thereon for the amount of the deposit. Any payments on account or final payments received are recorded on the appropriate invoice. If a final payment is received, the applicable sales tax based on the total invoice amount is shown separately on the cash register tape. The total receipts from the cash register tape are then broken down on a daily recap sheet. Deposits, payments on account and final payments are recorded as merchandise sales. The sales tax is recorded separately, indicating the invoice number, customer name and tax collected. Non-taxable sales are shown in the same manner. The daily recap sheets are posted to the cash receipts journal; however, merchandise sales are separated into delivered sales deposited, deposits and partial payments, the total of which are posted monthly to the sales account in the general ledger.

7. Petitioner charged approximately 2 1/2 percent of the sales amount for delivery and such delivery charges are reflected in the general ledger as sales. Said delivery charges are shown separately on petitioner's sales invoices.

8. Petitioner had non-taxable sales of $10,107.42 for the period June 1, 1976 through August 31, 1976. The test of non-taxable sales conducted by the Audit Division verified that said amount was correct. Petitioner's non-taxable sales for the audit period amounted to $197,959.00.

9. Petitioner's sales and customer deposits increased 52 percent from September 1, 1973 to August 31, 1976.

10. Petitioner reported the same gross and taxable sales on its sales tax returns except for the periods ending November 30, 1973 and August 31, 1976. Said sales were computed by dividing the tax collected from the cash receipts journal by the applicable tax rate.

11. Petitioner made refunds of $17,486.00 to customers during the period at issue which are included in gross sales.

12. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the audit procedures and tests employed by the Audit Division did not accurately determine additional sales taxes due in that such procedures are not consistent with petitioner's method of accounting. The Audit Division failed to give consideration to customer deposits, delivery charges, refunds, and the actual non-taxable sales, all of which were included in petitioner's gross sales. Accordingly, petitioner's taxable sales are redetermined as follows:

Gross sales per general ledger (9/1/73-8/31/76)		$2,651,151.00
Less: Refunds	$ 17,486.00	
Delivery charges	64,234.00	
Non-taxable sales	197,959.00	
Customer increased deposits computed based on a proportionate increase in sales from 1973-1976	45,458.00	325,137.00
Adjusted taxable sales		$2,326,014.00
Reported taxable sales		2,314,458.00
Difference		$ 11,556.00

That based on the foregoing computation, the additional taxable sales determined by the Audit Division are reduced from $185,684.00 to $11,556.00.

B. That the petition of Michaels Furniture, Inc. is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 24, 1977, together with interest computed at the minimum statutory rate; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

NOV 14 1980