

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Gaslight Village 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 Years :
1970 - 1973.

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 15th day of May, 1981, he served the within notice of Decision by mail upon Gaslight Village Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gaslight Village Inc.
Box 511
Lake George, NY 12845

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
15th day of May, 1981.

Annex G. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Gaslight Village Inc.

AFFIDAVIT OF MAILING

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under Article 28 & 29 of the Tax Law for the :
Years 1970 - 1973. :

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 15th day of May, 1981, he served the within notice of Decision by mail upon Francis T. Roach 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. Francis T. Roach
50 Colvin Ave.
Albany, 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 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 May, 1981.

Francis T. Roach
J. Vredenburg

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

May 15, 1981

Gaslight Village Inc.
Box 511
Lake George, NY 12845

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
Francis T. Roach
50 Colvin Ave.
Albany, NY 12206
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GASLIGHT VILLAGE, INC.
for Revision of a Determination or for Refund
of Sale and Use Taxes under Articles 28 and 29
of the Tax Law for the Period March 1, 1970
through August 31, 1973.

DECISION

Petitioner, Gaslight Village, Inc., Box 511, Lake George, New York, 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 March 1, 1970 through August 31, 1973 (File No. 00592).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 12, 1976 at 10:00 A.M. Petitioner appeared by Francis T. Roach, Esq. The Audit Division appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUES

I. Whether the petitioner is liable for New York State sales and use taxes on the purchase of paper cups in which drinks are dispensed by said petitioner.

II. Whether petitioner is liable for New York State sales and use taxes on the purchase of advertising materials.

III. Whether petitioner is liable for New York State sales and use taxes on the purchase of air conditioning units.

FINDINGS OF FACT

1. On June 20, 1974, 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, Gaslight Village, Inc., in the amount of \$28,046.83, plus penalty and interest of \$6,376.45, for a total of \$34,423.28 for the period March 1, 1970 through August 31, 1973. The petitioner executed a consent extending the period within which an assessment of sales and use taxes may be issued to June 20, 1974.

2. On September 10, 1975, the Audit Division issued a Notice of Assessment Review to reflect certain adjustments and to show that the adjusted tax due was \$27,555.17. The adjusted penalty and interest was \$5,807.11. There was \$24,490.71 paid on the assessment, leaving a balance due of \$8,871.57.

3. Petitioner, Gaslight Village, Inc., is a corporation that operates an amusement park known as "Gaslight Village" with various attractions, displays and rides in Lake George, New York. As part of the admission price, customers are given a brochure that pictures, describes and maps the sites. In addition, bumper stickers with petitioner's name and address thereon, are put on the customer's vehicles in the parking lot; and if they desire additional ones, they may have them. Metal wire bands are used to affix them to the vehicles. Upon request, the public can obtain these materials.

3. Petitioner, Gaslight Village, Inc., dispenses soft drinks and beer in paper cups to their customers in their food operations. A sales tax was collected upon each sale.

4. Petitioner, Gaslight Village, Inc., had installed four roof-top air conditioning units. These units were affixed to the top of a building housing an exhibit known as the Cavalcade of Cars, a part of "Gaslight Village". The

units with associated components were purchased from ABR Wholesalers, Inc., Rochester, New York for \$9,547.00 on June 24, 1973 and paid for directly by said petitioner. The installation itself was performed by a sheet metal and roofing contractor under contract with petitioner. No New York State sales or use tax was paid on the units either by petitioner or the installer.

5. Petitioner, Gaslight Village, Inc., cooperated with the Audit Division and acted in good faith.

CONCLUSIONS OF LAW

A. That the paper cups purchased by petitioner, Gaslight Village, Inc., were "for resale as such" within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law; and that therefore the purchase of said cups by the petitioner is excluded from the sales and use taxes. (Matter of Burger King, Inc. v. State Tax Commission, __ N.Y.2d __.)

B. That the free distribution of advertising materials and informational brochures to customers is not a sale by the petitioner, Gaslight Village, Inc., according to the meaning and intent of section 1101(b)(5) of the Tax Law. That petitioner was subject to the compensating use tax upon these materials according to the meaning and intent of section 1110 of the Tax Law. (Waxlife, U.S.A., Inc. v. State Tax Commission, 67 A.D.2d 1040, 413 N.Y.S.2d 494).

C. That the purchase of the air conditioning units by petitioner, Gaslight Village, Inc., from ABR Wholesalers, Inc., which were subsequently installed by petitioner's contractor, constitutes a purchase of tangible personal property and not a purchase of an additional or capital improvement to real property. That applicant was subject to the compensating use tax on the purchase of the air conditioning units according to the meaning and intent of section 1110 of the Tax Law.

D. That the petition of Gaslight Village, Inc., is granted to the extent that the penalty and additional interest is waived and the assessment of sales and use tax upon the purchase of paper cups is cancelled; 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 on June 20, 1974 and adjusted on September 10, 1975; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER