

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Mac Hunt Corp.

:

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of Sales Tax under :
Article 28 & 29 of the Tax Law for the Period 12/1/72
through 8/31/75. :

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Mac Hunt Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mac Hunt Corp.
1999 Jericho Tpke.
E. Northport, NY 11731

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
21st day of August, 1981.

Connie R. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mac Hunt Corp. :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales Tax under :
Article 28 & 29 of the Tax Law for the Period :
12/1/72 - 8/31/75. :

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Herbert W. Mintz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert W. Mintz
23 E. Carver St.
Huntington, NY 11743

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
21st day of August, 1981.

Carver R. Haglund

J. Vredenburg

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

August 21, 1981

Mac Hunt Corp.
1999 Jericho Tpke.
E. Northport, NY 11731

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
Herbert W. Mintz
23 E. Carver St.
Huntington, NY 11743
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Mac Hunt Corp.

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: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of Sales Tax under :
Article 28 & 29 of the Tax Law for the Period 12/1/72
through 8/31/75. :

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 August, 1981, he served the within notice of Decision by mail upon Mac Hunt Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mac Hunt Corp.
1999 Jericho Tpke.
E. Northport, NY 11731

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 August, 1981.

Pamela A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mac Hunt Corp. :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision
of a Determination or a Refund of Sales Tax under :
Article 28 & 29 of the Tax Law for the Period :
12/1/72 - 8/31/75. :

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 August, 1981, he served the within notice of Decision by mail upon Herbert W. Mintz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert W. Mintz
23 E. Carver St.
Huntington, NY 11743

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 August, 1981.

Annie P. Haglund

Jay Vredenburg

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

August 14, 1981

Mac Hunt Corp.
1999 Jericho Tpke.
E. Northport, NY 11731

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
Herbert W. Mintz
23 E. Carver St.
Huntington, NY 11743
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MAC HUNT CORP.

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 December 1, 1972
through August 31, 1975.

Petitioner, Mac Hunt Corp., 1999 Jericho Turnpike, East Northport, New York 11731, 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 December 1, 1972 through August 31, 1975 (File No. 15302).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 12, 1978 at 10:45 A.M. Petitioner appeared by Herbert W. Mintz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether certain paper and plastic products purchased by petitioner in which food and drink are packaged for sale are subject to sales or use tax.

II. Whether charges for maintenance services performed for petitioner by employees of a related corporation are subject to tax.

III. Whether the penalty and interest in excess of the minimum statutory rate should be cancelled.

FINDINGS OF FACT

1. Petitioner, Mac Hunt Corp., is a licensee of the McDonald Corporation operating a fast food restaurant at 1999 Jericho Turnpike, East Northport, New York.

2. On March 15, 1976, 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 covering the period December 1, 1972 through August 31, 1975 for taxes due of \$6,272.77, plus penalty and interest of \$2,239.88, for a total of \$8,512.65.

3. On audit, the Audit Division examined purchase invoices for the entire audit period and determined additional taxes due as follows:

- a) paper products - \$5,590.48
- b) maintenance services - 613.97
- c) fixed assets - 68.32 (not at issue)

4. The paper and plastic products at issue consisted of wrappers and containers for hamburgers, cups and lids for beverages, and sleeves for french fries all of which are used by petitioner to package food and drink sold to its customers. The foregoing packaging materials were transferred to the customer along with the appropriate food product for a single price. Petitioner considered the cost of such packaging in determining the selling price of its food products.

5. The maintenance services at issue herein, involve the services rendered for petitioner by employees of W & K Management Corp. (W & K). Petitioner's president, Mr. Klein, operated several other McDonalds Restaurants in the New York City area. For management purposes, Mr. Klein organized W & K as a separate corporation to handle the accounting for all the McDonalds he

operated as well as to maintain the payroll for certain supervisory personnel and maintenance employees. The salaries of the employees performing maintenance services are allocated each month to the respective store where such services are rendered including petitioner's store. The charge made by W & K to petitioner does not reflect any profit element, but rather its proportionate share of the actual payroll costs of the services performed. The maintenance personnel do not perform services for anybody other than the McDonald stores operated by Mr. Klein.

Petitioner argued that the payroll arrangement described above was purely a matter of bookkeeping convenience since otherwise, an employee performing services at different locations would receive a paycheck from each store. Moreover, petitioner argued that W & K and all the McDonald stores (including petitioner Mac Hunt) constitutes a single integrated business enterprise with common ownership and under such circumstances, the maintenance services were performed under an employer-employee relationship and the compensation paid for such services constituted wages exempt from sales tax.

6. Reasonable cause existed for petitioner's failure to pay the taxes at issue.

CONCLUSIONS OF LAW

A. That the paper and plastic packaging materials referred to in Finding of Fact "4" were purchased by petitioner for "resale as such" within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law and thus not subject to sales or use tax. Matter of Burger King, Inc. v. State Tax Commission, 51 N.Y.2d 614.

B. That an employer-employee relationship did not exist between petitioner and the persons performing maintenance services; that said personnel

were employed by and their wages paid by, W & K Management Corp., a separate entity.

That the charges made by W & K to petitioner constituted receipts from the sale of services within the meaning and intent of section 1105(c) of the Tax Law, and were thus subject to sales tax. Matter of Ready Mix and Supply Corp., New York State Tax Commission, February 9, 1977.

C. That the penalty is cancelled and the interest shall be computed at the minimum statutory rate.

D. That the petition of Mac Hunt Corp. is granted to the extent indicated in Conclusions of Law "A" and "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 15, 1976; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


RESIDENT


COMMISSIONER


COMMISSIONER