

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Odd-Burger, 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:
3/1/73-9/6/73 and 6/1/74-4/1/77.

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Odd-Burger, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Odd-Burger, Inc.
113 W. Sunrise Hgy.
Lindenhurst, NY

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
20th day of November, 1981.

James A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Odd-Burger, 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 3/1/73-9/6/73 and 6/1/74-4/1/77.

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Howard I. Dubow the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard I. Dubow
Dubow & Gucciardo, Esqs.
401 Broad Hollow Rd.
Melville, NY 11747

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
20th day of November, 1981.

Ann M. O'Hayden

J. Vredenburg

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

November 20, 1981

Odd-Burger, Inc.
113 W. Sunrise Hgy.
Lindenhurst, NY

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
Howard I. Dubow
Dubow & Gucciardo, Esqs.
401 Broad Hollow Rd.
Melville, NY 11747
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ODD-BURGER, 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 March 1, 1973	:	
through September 6, 1973 and June 1, 1974	:	
through April 1, 1977.	:	

Petitioner, Odd-Burger, Inc., 113 West Sunrise Highway, Lindenhurst, New York, filed a petition 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, 1973 through September 6, 1973 and June 1, 1974 through April 1, 1977 (File No. 21584).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1980 at 1:15 P.M. and continued on January 21, 1981 at 1:15 P.M. Petitioner appeared by Howard I. Dubow, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron and Frank Levitt, Esqs., of counsel).

ISSUE

Whether petitioner Odd-Burger, Inc. purchased equipment from Michael Di Giuseppe a/k/a Michael Di Guiseppi (seller), thereby making it liable under section 1141(c) of the Tax Law for any taxes asserted against the seller.

FINDINGS OF FACT

1. On January 15, 1977, Clara P. Buch, president of Odd-Burger, Inc., purchased restaurant equipment for the total sum of \$10,000.00 from Michael

DiGiuseppi. Clara Buch did not file with the tax commission a notificaiton of the purchase.

2. On August 30, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Odd-Burger, Inc. for the periods March 1, 1973 through September 6, 1973 and June 1, 1974 through April 1, 1977. The Notice was issued as a result of a field audit on D's Deli, Inc., of which Michael DiGiuseppi (seller) was president from June 1, 1974 through June 30, 1975. The Notice represented petitioner's alleged liability as purchaser of the above-mentioned equipment in accordance with the provisions of section 1141(c) of the Sales Tax Law. The Notice asserted a total tax due of \$38,050.48, plus penalties and interest of \$3,388.16, for a total of \$41,438.64.

3. As a result of a conference, the petitioner's liability was reduced to \$10,000.00, the sum which was paid by Clara Buch to Michael DiGiuseppi for the restaurant equipment.

4. It was the Audit Division's position that Michael Di Giuseppe (seller) was a person required to collect tax under the provisions of section 1131 and 1133 of the Tax Law and as such liable for taxes due from D's Deli, Inc. Since petitioner failed to notify the tax commission of its purchase of equipment from Michael DiGiuseppi, it was the Audit Division's position that Odd-Burger, Inc. became liable for such taxes under the provisions of section 1141(c) of the Tax Law limited to the amount of the purchase price.

5. Petitioner introduced a bill of sale which showed Clara P. Buch, as an individual, was the purchaser of the equipment from Michael DiGiuseppi, an individual.

6. The Audit Division failed to introduce any evidence to show that Odd-Burger, Inc. owned any of the equipment Clara Buch purchased from Michael DiGiuseppi or, if it did, how it was acquired.

CONCLUSIONS OF LAW

A. That Odd-Burger, Inc. did not purchase any of the equipment from Michael DiGiuseppi; therefore, it cannot be held liable for any taxes due from him under the provisions of section 1141(c) of the Tax Law.

B. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 30, 1977 was in error and is hereby cancelled.

DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

RETURNED TO SENDER
REASON CHECKED
Unclaimed
Addressee unknown
Insufficient address
No such street
No such office in state
Moved left no address
Moved not forwardable
X

Odd-Burger, Inc.
113 W. Sunrise Hwy.
Lindenhurst NY

NOT FORWARDED

GBA
12/24

REASON CHECKED
Unclaimed
Addressee unknown
Insufficient address
No such street
No such office in state
Moved left no address
Moved not forwardable
X

TAX APPEALS
DEC 2 - 1981
RECEIVED

CERTIFIED
P34
MAIL

REQUEST FOR BETTER ADDRESS

Dec - Sm Claims

Requested by <i>Jean Schutt</i>	Unit <i>Tax Appeal Calendar</i>	Date of Request <i>12/2/81</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>?</i>	Date of Petition <i>78/04/04</i>
Name <i>DD-Burger, Inc</i>	
Address <i>113 W. Sunrise Hwy Hicksville N.Y.</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>0-80 # 0-79 # 0-78 #</i>

Searched by <i>L. Panetta MA</i>	Section <i>Master Index MI</i>	Date of Search <i>12-8-81 12-8-81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

November 20, 1981

Odd-Burger, Inc.
113 W. Sunrise Hgy.
Lindenhurst, NY

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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
Howard I. Dubow
Dubow & Gucciardo, Esqs.
401 Broad Hollow Rd.
Melville, NY 11747
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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6. The Audit Division failed to introduce any evidence to show that Odd-Burger, Inc. owned any of the equipment Clara Buch purchased from Michael DiGiuseppi or, if it did, how it was acquired.

CONCLUSIONS OF LAW

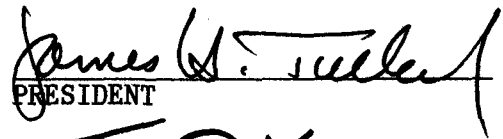
A. That Odd-Burger, Inc. did not purchase any of the equipment from Michael DiGiuseppi; therefore, it cannot be held liable for any taxes due from him under the provisions of section 1141(c) of the Tax Law.

B. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 30, 1977 was in error and is hereby cancelled.

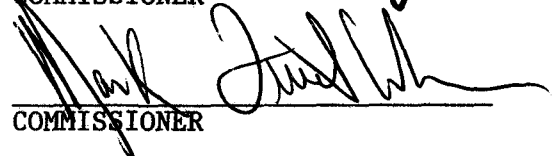
DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER