

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

October 7, 1983

Auxiliary Services, State University College at Oswego, Inc.
Colkin Hall, Rm. 506
Oswego, NY 13126

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 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 Law 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
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stephen C. Greene
87 W. Bridge St.
Oswego, NY 13126
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
AUXILIARY SERVICES, STATE UNIVERSITY COLLEGE	:	DECISION
AT OSWEGO, INC.	:	
	:	
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, 1977	:	
through November 30, 1979.	:	

Petitioner, Auxiliary Services, State University College at Oswego, Inc., Colkin Hall, Room 506, Oswego, New York 13126, 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, 1977 through November 30, 1979 (File No. 31257).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 26, 1982 at 10:45 A.M., with all briefs to be submitted by December 15, 1982. Petitioner appeared by Stephen C. Greene, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed certain nontaxable sales reported by petitioner.

FINDINGS OF FACT

1. Petitioner, Auxiliary Services, State University College at Oswego, Inc., is a not-for-profit educational corporation organized and existing under the laws of New York State and operated the following activities and services

for the State University of New York at Oswego: food service, college store and recreation.

The Department of Taxation and Finance granted exempt organization status to petitioner under certificate number 121062.

2. On June 17, 1980, 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 March 1, 1977 through November 30, 1979 for taxes due of \$5,475.84, plus interest of \$755.31, for a total of \$6,231.15.

3. Petitioner maintained daily cash receipts records which contained a breakdown of cash sales, charge sales, paid on account, nontaxable sales and sales tax collected. On audit, the Audit Division examined these documents along with sales invoices for July, 1977, September, 1978 and February, 1979 and exemption certificates to verify taxable and nontaxable receipts. The Audit Division disallowed nontaxable sales of \$24,677.00 or 2.5764 percent of taxable receipts reported for said months. This percentage was applied to taxable sales of \$4,508,385.00 reported for the audit period to determine additional taxable sales of \$116,154.00 and taxes due thereon of \$5,475.84.

The food service sales were disallowed on the basis that the auditor was unable to determine whether such services were purchased on behalf of an exempt organization and paid by that organization.

Included in the disallowed nontaxable sales above were miscellaneous sales of items other than food services which amounted to \$749.00. The auditor also disallowed sales of art supplies totaling \$6,914.00. This amount was not used in computing the error factor; however, such sales were considered to have been made once in each year under audit, for a total of \$20,742.00.

The miscellaneous sales and sales of art supplies are not in dispute.

4. The Department of Taxation and Finance, in its answer to the perfected petition, stated that based on Matter of Chartair, Inc. v. State Tax Commission, 65 A.D.2d 44, additional taxes of \$4,212.60 estimated for periods where books and records were available to determine the actual tax liability, are cancelled.

5. The sales invoices reviewed and disallowed as nontaxable by the Audit Division were made out to individuals rather than organizations. The invoices indicated the function for which the food services were purchased.

Several departments, clubs and other organizations within the State University have accounts with petitioner. They deposited funds in such accounts and purchases of food services are charged to their account. Petitioner invoiced the department head or individual coordinating a particular function. Upon approval of the invoice for payment, petitioner disbursed the funds from the account of the club, department or organization.

6. The disallowed nontaxable sales from the test months consisted of the following:

(a)	(b)	(c)
1. Don Kamalsky	\$ 94.93	
2. Jackie Johnson	428.02	Office of Special Programs
3. Larry Milan	16.06	Office of Special Programs
4. Dr. Edward Nordby	382.80	#147-400-26K German Department
5. Ray Murray	356.40	
	488.10	#147-400-26K Library
6. Lewis Popham	1,537.35	#147-400-26K Continuing Education
7. Hubert Smith	44.00	#147-400-26K Office of Special Programs
8. Michael Jones	16,388.16	Student Affairs 3rd Curriculum
9. Martin Fox	1.37	
10. Marydee Spillet	88.85	Career Planning and Placement
11. G. Sachidon (phonetic)	1,825.00	Research Foundation #119222
12. Swim Team	34.50	Physical Education Department
13. Dr. Virginia Radly	297.60	President
14. Sue Lenkiewicz - Central Planning and Development	372.00	#16-75-0063K
15. Dr. Ralph Spencer	91.53	Provost
16. Mark Lutvak Seth Shanty (Hillel Club)	56.13	Student Association #143651
17. Dr. Smernoff	9.00	French Department

18. Kathy Stento (BASIC)	14.25	Student Association #143651
19. Gregg Auleta	35.13	Office of Special Programs
20. Carolyn Rush (Oswego College personnel)	4.75	Exemption Certificate
21. Debbie McClellan	9.50	
22. Richard Shineman	378.00	Chemistry
23. Mike Byrne	21.25	Student Association #143651
24. Dr. Michael Adams	54.70	Physical Education Department
25. Dr. Moss	72.00	
26. Dr. Lynn Hemink	127.50	
27. Jane Nuffer	44.85	
28. Bill Young (Philosophy Club)	8.25	Student Association #143651
29. James Wassenaar	88.75	Housing
30. Harry Schack	442.50	Housing
31. Gabe Geiger	43.45	Housing
32. Dr. T. Maas (Kappa Delta Pi)	10.75	

7. The following departments, clubs and organizations have funds on deposit with petitioner:

Student Affairs - 3rd Curriculum
Career Planning and Placement
Office of the President and Provost
Student Association
Office of Special Programs
German Department
Chemistry Department
Continuing Education
Housing Department

8. The individuals named in Finding of Fact "6(2) through (8), (10), (12), (13), (15), (17), (19), (22), (24), (29), (30) and (31)" were persons who purchased food services from petitioner for conferences, meetings, student orientation and similar functions held in connection with the official business of the State University of New York at Oswego. Said individuals are employees of New York State and work in the departments indicated in Column C. Petitioner received payment from the funds on deposit with it, drawn on checks in the name of the department. All of the departments are part of the State University and the funds in the account of each department were funds of the State University.

9. The purchases by the individuals named in Finding of Fact "6(16), (18), (23) and (28)" were made on behalf of certain clubs sponsored by the

Student Association. The Student Association paid for such purchases and issued an Exempt Organization Certificate (Ex-143651).

10. G. Sachidon (Finding of Fact "6(11)") is an employee of the Research Foundation of State University of New York. This purchase was paid by the Research Foundation which issued an Exempt Organization Certificate (Ex-119222).

11. Central New York Planning and Development Board (Finding of Fact "6(14)") furnished petitioner with a form entitled Registration for Tax-Free Transactions Under Chapter 32 of the Internal Revenue Code (No. 16-75-0063K) which indicated it was a governmental agency. Petitioner in good faith accepted this certificate as proof of exemption.

12. Carolyn Rush is employed by Oswego County (Finding of Fact "6(20)"). She furnished petitioner with form AC-946, Tax Exemption Certificate. The invoice was paid by Oswego County.

13. Petitioner offered no substantial evidence to establish exemption with respect to the purchases made by the persons indicated in Finding of Fact "6(1), (9), (21), (25), (26), (27) and (32)".

CONCLUSIONS OF LAW

A. That the purchases set forth in Findings of Fact "8" and "12" constitute purchases made by the State University of New York and Oswego County, respectively, and therefore, are exempt from the imposition of sales and use taxes under section 1116(a)(1) of the Tax Law.

B. That petitioner was furnished with Exempt Organization Certificates by the Student Association and the Research Foundation of State University of New York as evidence of exemption for the sales referred to in Findings of Fact "9" and "10". Accordingly, petitioner is not liable for the tax it failed to collect on these transactions pursuant to section 1132(c) of the Tax Law.

C. That the sale to Central New York Regional Planning and Development Board (Finding of Fact "11") was made directly to and paid for by a governmental agency and, as such, was not subject to tax.

D. That with respect to the sales to the persons set forth in Finding of Fact "6(1), (9), (21), (25), (26), (27) and (32)", petitioner failed to sustain the burden of proof required by section 1132(c) of the Tax Law.


E. That in accordance with Finding of Fact "4", the additional taxes due shall be limited to the actual amount found due for July, 1977, September, 1978 and February, 1979.

F. That the petition of Auxiliary Services, State University College at Oswego, Inc. is granted to the extent indicated in Conclusions of Law "A", "B", "C" and "E"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 17, 1980; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Auxiliary Services, State University College :
at Oswego, 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 :
3/1/77-11/30/79. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Auxiliary Services, State University College at Oswego, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Auxiliary Services, State University College at Oswego, Inc.
Colkin Hall, Rm. 506
Oswego, NY 13126

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
7th day of October, 1983.

Susan Powell

Connie A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Auxiliary Services, State University College :
at Oswego, 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 3/1/77-11/30/79. :

State of New York
County of Albany

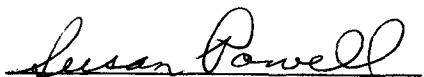
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Stephen C. Greene the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

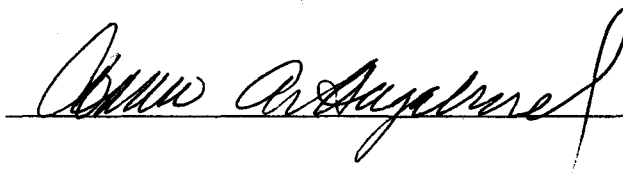
Stephen C. Greene
87 W. Bridge St.
Oswego, NY 13126

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
7th day of October, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 470 316 118

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

Sent to <i>Stephen C Greene</i>	
Street and No. <i>87 W Bridge ST</i>	
P.O., State and ZIP Code <i>OSwego NY 13126</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

P 470 316 117

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

Sent to <i>Auxiliary Serv. Stat</i>	
Street and No. <i>University College</i> <i>at Oswego Ind</i>	
P.O., State and ZIP Code <i>College Hall Rm 506</i> <i>OSwego NY 13126</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	