

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

February 4, 1983

Farrell Lines, Incorporated
1 Whitehall St.
New York, NY 10004

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Farrell Lines, Incorporated	: : : : : : :	: : : : : : :
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 6/1/74 - 8/31/76.		

State of New York
County of Albany

David Parchuck, 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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Farrell Lines, Incorporated, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Farrell Lines, Incorporated
1 Whitehall St.
New York, NY 10004

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
4th day of February, 1983.

David Parchuck

James 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	:	
FARRELL LINES INCORPORATED	:	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 June 1, 1974	:	
through August 31, 1976.	:	

Petitioner, Farrell Lines Incorporated, One Whitehall Street, New York, New York 10004, 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 June 1, 1974 through August 31, 1976 (File No. 22130).

Petitioner filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether a management fee paid by petitioner to Harding-Williams Dixie Corporation, a food service company, in return for the operation of petitioner's employee cafeteria is subject to sales tax.

FINDINGS OF FACT

1. On September 14, 1977 petitioner, Farrell Lines Incorporated, filed an Application for Credit or Refund of State and Local Sales or Use Tax in the amount of \$16,783.27 for the period June 1, 1974 through August 31, 1976. The Audit Division denied the claim in full by letter dated November 29, 1977.
2. During the period in issue Harding-Williams Dixie Corporation ("Harding"), a subsidiary of Saga Food Service, operated petitioner's employee cafeteria.

Harding collected sales tax on the sales price charged to the employees for food purchases. Harding also charged petitioner an expense reimbursement fee which Harding called a management fee.

3. Following an audit of Harding, the Audit Division determined that sales tax was due on the management fee. Harding charged petitioner \$16,473.87 for the tax plus \$309.40 interest. Petitioner paid the tax to Harding and Harding remitted the amount to the Department of Taxation and Finance.

4. Petitioner maintains that the management fee is not a retail sale which is subject to tax and that only the food sales are taxable. The Audit Division argued that all payments to a caterer or food service contractor, regardless of the fee designation, are taxable as receipts from the sale of food and drink.

CONCLUSIONS OF LAW

A. That section 1105(d)(i) of the Tax Law provides that there shall be a tax paid upon the receipts "from every sale of food and drink of any nature, or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers."

B. That the amounts paid to food service operators under reimbursed costs, subsidy or management fee arrangements are sales of food and drink within the intent and meaning of section 1105(d)(i). Harding's operation is analogous to a caterer's and constitutes a sale to petitioner (Stouffer Management Food Service, Inc. v. Tully, 98 Misc.2d 1128, aff'd 69 A.D.2d 1023; Matter of Corporate Food Services, Inc., State Tax Commission, October 6, 1982). Harding, therefore, properly collected sales tax on the management fee paid by petitioner.

C. That the petition of Farrell Lines Incorporated is denied and the denial of refund dated November 29, 1977 is sustained.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION

ACTING

PRESIDENT


COMMISSIONER


COMMISSIONER


COMMISSIONER

P 389 758 509
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Farrell Lewis, Incorporated	
Street and No.	
1 Whitehall St	
P.O., State and ZIP Code	
New York N.Y. 10004	
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	

PS Form 3800, Feb. 1982