

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

January 10, 1983

Hospitality House, Inc.
c/o James Deisenroth, Pres.
2226 Penfield Rd.
Penfield, NY 14526

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 :
Hospitality House, 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 3/1/74-2/28/77. :

State of New York
County of Albany

Kathy Pfaffenbach, 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 10th day of January, 1983, he served the within notice of Decision by certified mail upon Hospitality House, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hospitality House, Inc.
c/o James Deisenroth, Pres.
2226 Penfield Rd.
Penfield, NY 14526

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
10th day of January, 1983.

Joan A. Schillz

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Kathy Pfaffenbach

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HOSPITALITY HOUSE, 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, 1974
through February 28, 1977.

DECISION

Petitioner, Hospitality House, Inc., 2226 Penfield Road, Penfield, New York 14526, 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, 1974 through February 28, 1977 (File No. 30723).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on January 20, 1982 at 1:15 P.M. Petitioner appeared by its President, James Deisenroth. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner timely filed a petition for revision of a determination of tax due.

II. Whether service charges by a restaurant or caterer are subject to sales tax prior to the effective date of 20 NYCRR 527.8.

FINDINGS OF FACT

1. Petitioner, Hospitality House, Inc., operated a catering business located at 2226 Penfield Road, Penfield, New York.

2. On August 31, 1977, 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, 1974 through February 28, 1977 for taxes due of \$4,246.07, plus penalty and interest of \$2,067.96, for a total of \$6,314.03.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period March 1, 1974 through August 31, 1974, to December 20, 1977.

4. Upon receipt of the notice, petitioner contacted Gerald A. Navagh, attorney for the New York Restaurant Association, for advice.

Mr. Navagh, by letter dated September 26, 1977 addressed to Commissioner James H. Tully, Jr., requested a ruling as to the effective date of the taxability of restaurant service charges.

This issue was the basis for the additional taxes determined due from petitioner on audit.

5. The above letter did not mention petitioner nor indicate that any member of the New York Restaurant Association was involved in a tax dispute over the issue of service charges. The letter, by the most liberal of interpretations, could not be considered a request for a hearing.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides, in part, that a notice of determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving notice of such determination, shall apply to the Tax Commission for a hearing.

That petitioner failed to comply with said section of the Tax Law and therefore the taxes due of \$4,246.07 were finally and irrevocably fixed.

B. That Issue II is moot.

C. That the petition of Hospitality House, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 31, 1977 is sustained.

DATED: Albany, New York

JAN 10 1983

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

P 278 401 560
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

SENT TO <i>Hospitality House, Inc.</i>			
c/o <i>James Deisenroth, Pres</i>			
STREET AND NO. <i>2226 Penfield Road</i>			
P.O., STATE AND ZIP CODE <i>Penfield, NY 14526</i>			
POSTAGE	\$		
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	c	
	SPECIAL DELIVERY	c	
	RESTRICTED DELIVERY	c	
	OPTIONAL SERVICES RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	c
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	c
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	c
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	c
TOTAL POSTAGE AND FEES	\$		
POSTMARK OR DATE			

PS Form 3800, Apr. 1976