

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

February 11, 1983

Mid City Security Services, Inc.  
ATTN: Irving Kaplan  
97-77 Queens Blvd.  
Rego Park, NY 11374

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

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In the Matter of the Petition :  
of :  
Mid City Security Services, 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:  
6/1/75-5/31/78.

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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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Mid City Security Services, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mid City Security Services, Inc.  
ATTN: Irving Kaplan  
97-77 Queens Blvd.  
Rego Park, NY 11374

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  
11th day of February, 1983.

David Parchuck

Conrad G. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
MID CITY SECURITY SERVICES, 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 June 1, 1975  
through May 31, 1978.

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DECISION

Petitioner, Mid City Security Services, Inc., 97-77 Queens Boulevard, Rego Park, New York 11374, 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, 1975 through May 31, 1978 (File No. 26498).

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 September 28, 1981 at 2:45 P.M. Petitioner appeared by Irving Kaplan, Treasurer. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional taxable sales and the tax due thereon based on petitioner's operating expenses.

FINDINGS OF FACT

1. On September 5, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Mid City Security Services, Inc. covering the period June 1, 1975 through May 31, 1978. The Notice was issued as a result of a field audit and asserted additional sales

tax due of \$7,840.37, plus penalties and interest of \$2,755.47, for a total of \$10,595.84.

2. Petitioner executed a consent to extend the period of limitation for assessment to January 20, 1979.

3. Mid City Security Services, Inc. ("Mid City") is engaged in providing security guard services subject to 4 percent sales tax under section 1212-A of the Tax Law. The majority of the services performed were for Lefrak City Complex ("Lefrak"). Mid City did not profit from the rendition of its services. Mid City billed Lefrak only for its payroll (with appropriate payroll taxes) and remitted the sales taxes thereon.

4. During the course of the audit, the Audit Division found that income from Lefrak was not reported on required federal returns nor was the payroll expense deducted in spite of the fact that Mid City paid their employees and withheld and reported payroll taxes. Originally, the auditor found that the controller of both Mid City and Lefrak made only bookkeeping entries on the appropriate books and that Mid City was reimbursed for the amount of the payroll. Petitioner later submitted invoices showing billings for the guard service payroll.

In explanation of the arrangement between Mid City and Lefrak, a copy of an internal memorandum from Mid City's treasurer dated July 21, 1978 was submitted to the auditor which read as follows:

"Re: Mid City Security Services, Inc.

The above-captioned company and the twenty (20) residential buildings comprising the 'Lefrak City Complex' entered into a verbal understanding whereby Mid-City agreed to furnish security guard services to the residential buildings. The agreement provided for Mid-City to be reimbursed for its labor charges plus related payroll benefits and taxes.

However, in conducting its operations, Mid-City has incurred significant additional operating and administrative costs and expenses, creating a loss situation. Accordingly, Mid-City sought to re-negotiate its original understanding with the building owners, for which it supplied service, in order to obtain additional monies to cover these additional operating costs. To date, the owners of the buildings have not agreed to accept any charges other than for payroll and payroll related items. Negotiations are still pending.

Mid-City acknowledges that, when and if it is successful in reaching agreement with the various building owners, and bills and collects the monies it seeks, it will pay the appropriate sales tax due, for transactions entered into after September 1, 1975. In the interim period, Mid City has established a deferred charges account (Accounts Receivable) on its books. At June 30, 1978, such account aggregates \$145,700 (see schedule attached). <sup>1</sup>

Further, during this period of negotiation, the owner of Mid City is providing the necessary operating funds."

5. In conjunction with the above, the Audit Division held that the operating costs in the accounts receivable were taxable receipts because Mid City would eventually be reimbursed by Lefrak. The Audit Division determined additional taxable sales of \$189,318.00 for the period in issue subject to 4 percent sales tax. The Audit Division also determined additional taxable sales of unreturned uniforms in the amount of \$3,346.00 subject to sales tax at the rate of 8 percent. This amount, however, is not at issue. The Audit Division thereby determined the additional sales tax due of \$7,840.37.

6. It was the Audit Division's position that the above operating costs constituted taxable receipts. In support of its position, the Audit Division cited 20 NYCRR 526.5(e) which, in discussing elements of a receipt, states that all expenses incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible

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<sup>1</sup> The schedule attached to the memorandum included the Accounts Receivable balance at Mid-City's fiscal year ended June 30, 1974 and also covered the period July 1, 1974 through June 30, 1977.

from the receipts. The Audit Division did not confirm the "accounts receivable" either by book entry or with Lefrak City Complex.

7. Petitioner argued that since it billed Lefrak City Complex only for the amount of its guard service payroll, its operating costs could not be considered taxable receipts. Petitioner did not deduct any operating expenses from its receipts for guard service. Petitioner did not bill Lefrak for any of its operating expenses.

8. Petitioner explained that Mid City was originally set up on a test basis in Lefrak City Complex to build a reputation for future business, mainly the acquisition of a contract to provide guard services at Battery Park. It provided low cost guard services to Lefrak as an investment for future contracts. The "accounts receivable" as noted in the internal memorandum was an accumulation of expenses incurred over the years in providing such services.

9. Petitioner did not raise the issue of the application of penalties and interest.

#### CONCLUSIONS OF LAW

A. That section 1101(b)(3) of the Tax Law defines receipt as the amount of the sale price of any property and the charge for any service taxable under Articles 28 and 29 of the Tax Law, valued in money, whether received in money, or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses.

B. That petitioner properly charged and remitted sales tax on its receipts which were taxed under section 1212-A of the Tax Law. No evidence exists that any charges other than those billed and reported by petitioner were made to Lefrak City Complex or any other customer. That until such time that the operating expenses are reimbursed to petitioner or billed by petitioner, they

are not taxable receipts within the meaning of section 1101(b)(3) of the Tax Law. That the additional sales tax due as found by the Audit Division based on operating expenses is hereby cancelled.

C. That the petition of Mid City Security Services, Inc. is granted to the extent indicated in Conclusion "B" above. That the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 5, 1978 to reflect tax due on unreturned uniforms pursuant to Finding of Fact "5"; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 11 1983

*Philip Barland*  
ACTING PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Friedman*  
COMMISSIONER

P 389 758 586  
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Mid City Security services, Inc. Attn: Irving Kaplan	
Street and No. 97-77 Queens Blvd.	
P.O., State and ZIP Code Rego Park, NY 11374	
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