

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

June 24, 1983

Turners Grove, Inc. (purchaser)
RD #1 Taft Road
East Syracuse, NY 13057

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
Shae C. Riley
Grimaldi & Fagliarone
627 W. Genesee St.
Syracuse, NY 13204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
TURNER'S GROVE, INC. (PURCHASER)	:	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 Periods December 1, 1969	:	
through November 30, 1972 and June 1, 1974	:	
through December 31, 1975.	:	

Petitioner, Turner's Grove, Inc., Taft Road, RD 1, East Syracuse, New York 13057, 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 periods December 1, 1969 through November 30, 1972 and June 1, 1974 through December 31, 1975 (File No. 19754).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on April 30, 1981 at 1:15 P.M. Petitioner appeared by Grimaldi & Fagliarone, C.P.A.'s (Shae C. Riley, C.P.A.). The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether the Audit Division timely issued a notice to the petitioner of the total amount of taxes which the State claimed to be due from the seller in a bulk sale transaction.

II. Whether the Audit Division is required to take action against the bulk sale seller prior to seeking to obtain sales taxes due from the bulk sale purchaser.

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CERTIFIED

P 481 207 948

MAIL

CLAIM CHECK
NO.

572956

DEAD

DATE

7-29

1ST NOTICE

2ND NOTICE

RETURN

Delivered by
PS Form 3800-4
Oct. 1980

Turners Grove, Inc. (purchaser)
RD #1 Taft Road
East Syracuse, NY 13057

proved
Left no Address

101



FINDINGS OF FACT

1. On March 28, 1977, petitioner, Turner's Grove, Inc., filed a Notification of Sale, Transfer or Assignment in Bulk with the Audit Division. Information submitted was that Anthony Barnell and Louis Cacciola sold the land, buildings and equipment of Taft Grove, RD 1, Taft Road, East Syracuse, to Turner's Grove, Inc. for \$70,000.00 of which the furniture, fixtures, etc. were listed at \$45,000.00. The date of sale was September 9, 1975. The Department of Taxation and Finance received said notice on April 1, 1977.

2. On June 30, 1977, the Audit Division notified petitioner as purchaser in a bulk sale transaction of a possible claim for New York State and local sales and use taxes from the seller Anthony Barnell and Louis Cacciola d/b/a Taft Grove.

3. On July 15, 1977, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against Turner's Grove, Inc. (Purchaser) covering the periods December 1, 1969 to November 30, 1972 and June 1, 1974 to December 31, 1975 for taxes due of \$11,563.33, plus penalty and interest of \$5,870.20, for a total of \$17,433.53. Petitioner was held liable for taxes determined due from Anthony Barnell and Louis Cacciola d/b/a Taft Grove in accordance with section 1141(c) of the Tax Law. The Notice also included the bulk sale tax on the value of tangible personal property transferred.

4. Petitioner argued that it had not paid the tax because it was secondarily liable and that collection should not proceed against it until the State proceeded against the seller of the property. Petitioner further argued that it had not received timely notice of sales tax due from the seller.

CONCLUSIONS OF LAW

A. That the transaction between petitioner and Anthony Barnell and Louis Cacciola d/b/a Taft Grove constituted a bulk sale within the meaning and intent of section 1141(c) of the Tax Law.

B. That section 1141(c) of the Tax Law effective during the period in issue provided, in part, that within 180 days of receipt of the notice of a bulk sale, the Tax Commission must give notice to the purchaser of any taxes which the State claims to be due from the seller. The Department of Taxation and Finance received notice of the bulk sale in issue on April 1, 1977 and the Audit Division issued a notice and demand on July 15, 1977. Since the notice was issued within the 180 day statutory period such notice was timely.

C. That the State may not be estopped "from collecting taxes lawfully imposed and remaining unpaid in the absence of statutory authority" (McMahon v. State Tax Commission, 45 A.D.2d 625, 627). There is no statutory duty or responsibility imposed on the State to first obtain tax due from the seller in a bulk sale transaction (Matter of Edward M. Burns d/b/a Studio B, State Tax Commission, December 14, 1982).

D. That penalty and interest in excess of the minimum prescribed by section 1145(a) of the Tax Law are waived.

E. That the petition of Turner's Grove, Inc. is granted to the extent indicated in Conclusion of Law "D", and that, except as granted, the petition is in all other respects denied.


DATED: Albany, New York


STATE TAX COMMISSION

JUN 24 1983


PRESIDENT


COMMISSIONER


COMMISSIONER



REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit	Date of Request 7/7/83
---	------	-------------------------------

Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition F- Doc 6/24/83
Name Turner, Grace, Inc.	
Address RD #1, Taft Rd. East Syracuse, N.Y. 13057	

Results of search by Files

<input type="checkbox"/> New address:	AIA MF 7/7/83 jpb
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER