

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

May 27, 1983

H. R. Wait Co., Inc.  
c/o James R. Wait, Secretary-Treasurer  
77 Genesee St.  
Auburn, NY 13021

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) 1139 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
H. R. Wait Co., Inc. :  
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 12/1/78-5/31/80. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

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 27th day of May, 1983, he served the within notice of Decision by certified mail upon H. R. Wait Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

H. R. Wait Co., Inc.  
c/o James R. Wait, Secretary-Treasurer  
77 Genesee St.  
Auburn, NY 13021

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  
27th day of May, 1983.

David Parchuck

James R. Wait

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	:	
H.R. WAIT CO., INC.	:	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 December 1,	:	
1978 through May 31, 1980.	:	

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Petitioner, H.R. Wait Co., Inc., 77 Genesee Street, Auburn, New York 13021, 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 December 1, 1978 through May 31, 1980. (File No. 33954).

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 9:15 A.M. Petitioner appeared by James Wait, Secretary-Treasurer. The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a credit or refund for tax paid on receipts ascertained to be uncollectible.

FINDINGS OF FACT

1. Petitioner, H.R. Wait Co., Inc. operated a retail furniture store located at 77-83 Genesee Street, Auburn, New York.

2. An audit of petitioner's books and records disclosed additional sales and use taxes due of \$4,325.48. Petitioner paid the taxes determined due plus applicable interest under protest and requested a hearing. Thereafter, petitioner

applied for a refund of \$1,449.01 which represented approximately 40 percent of the bad debt credits that were disallowed on audit.

3. On audit, the Audit Division disallowed \$3,202.05 in bad debt credits taken by petitioner on its sales and use tax returns filed for the period December 1, 1977 through February 29, 1980. The disallowance was based on the fact that the sales on which the bad debt credits were taken, occurred at least three years prior to the period in which the credit was taken and therefore the credits were barred by the statute of limitations. The refund application was denied for the same reason.

4. The amount in dispute at the hearing was the full \$3,202.05 bad debts credit disallowed on audit.

5. The bad debt credits were taken by petitioner within three years from when the accounts were written off for federal income tax purposes.

6. Petitioner argued that its sales are on the installment basis and that three years is insufficient to determine if an account will become uncollectible. Moreover, petitioner argued that the credits should be allowed since they were claimed within three years from when the accounts were written off on income tax returns.

#### CONCLUSIONS OF LAW

A. That section 1132(e) of the Tax Law provides that the Tax Commission may provide, by regulation, for the exclusion from taxable receipts of amounts representing sales that have been ascertained to be uncollectible or in case the tax has been paid upon the receipt, for refund or credit for the tax so paid. Said section further provides that the taking of a credit on a return shall be deemed to be part of the application for credit and shall be subject to the provisions of section 1139 of the Tax Law.


B. That section 1139(a) of the Tax Law provides that the Tax Commission shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor shall be filed with the Tax Commission, in the case of a tax paid by applicant to the Tax Commission, within three years after the date when such amount was payable.

C. That the credits claimed by petitioner for the tax paid on bad debts were not made within three years after the date such taxes were payable to the Tax Commission in accordance with section 1139(a) of the Tax Law and 20 NYCRR 525.5. Therefore, petitioner is not entitled to a credit or a refund (Matter of J.C. Penny Co., Inc. State Tax Commission, October 17, 1980).

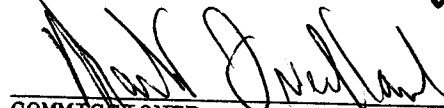
D. That the petition of H.R. Wait Co., Inc. is in all respects denied.

DATED: Albany, New York  
MAY 27 1983

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 481 207 829

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>H. R. Wait Co., Inc.</u>	
<u>Attn: James R. Wait, Secretary</u>	
Street and No. <u>77 Genesee St.</u>	
P.O., State and ZIP Code <u>Auburn, NY 13021</u>	
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