

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

November 9, 1984

Bon-Ton of Syracuse, Inc.
formerly Donnor Sales, Inc.
c/o Mr. Donald Connor
448 Burnet Ave.
Syracuse, NY 13203

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Bon-Ton of Syracuse, Inc. :
formerly Donnor Sales, Inc. : AFFIDAVIT OF MAILING
:
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the Period :
9/1/79 - 5/31/82. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon Bon-Ton of Syracuse, Inc., formerly Donnor Sales, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bon-Ton of Syracuse, Inc.
formerly Donnor Sales, Inc.
c/o Mr. Donald Connor
448 Burnet Ave.
Syracuse, NY 13203

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of November, 1984.

David Parchuck

James P. Hegarty
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BON-TON OF SYRACUSE, INC.	:	DECISION
formerly DONNOR SALES, 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 September 1, 1979	:	
through May 31, 1982.	:	

Petitioner, Bon-Ton of Syracuse, Inc., formerly Donnor Sales, Inc., 448 Burnet Avenue, Syracuse, New York 13203, 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 September 1, 1979 through May 31, 1982 (File No. 41059).

A small claims hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on February 3, 1984 at 11:15 A.M., with all documents to be filed on or before February 17, 1984. Petitioner appeared by Mr. Donald Connor, president. The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether petitioner is liable for additional sales and use taxes as a result of a field audit.

FINDINGS OF FACT

1. On December 7, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Donnor Sales, Inc. The Notice assessed a total tax due of \$15,755.25 for the period September 1, 1979

through May 31, 1982, plus interest of \$3,032.48, for a total amount due of \$18,787.13. The Notice explained, in part, that the tax was determined in accordance with section 1138 of the Tax Law and was based on an audit of petitioner's records.

2. At the time the Notice was issued, the Audit Division had not been advised by the Department of State that the name Donnor Sales, Inc. had been changed to Bon-Ton of Syracuse, Inc.

3. In the course of the audit, the auditor reviewed petitioner's purchase records in detail and concluded that use tax was due on three items. First, the auditor found that use tax of \$738.36 was due on recurring purchases from suppliers. Second, the auditor determined that use of \$715.12 tax was due on petitioner's purchase of furniture and fixtures. Lastly, the auditor concluded that use tax in the amount of \$12,615.61 was due on petitioner's purchase of materials which were incorporated into capital construction.

4. The auditor also determined that sales tax was due in the amount of \$1,686.16 upon a finding of unsubstantiated exempt sales. One portion of the sales tax alleged to be due was found through the use of an error rate derived through an examination of sales invoices for the period December 1, 1981 through May 31, 1982.

5. After the audit was completed, Mr. Connor, on behalf of Donnor Sales, Inc., executed a document consenting to the utilization of a representative test period audit method.

6. On September 1, 1979, Mr. Donald Connor purchased the assets of a business known as Bon-Ton of Syracuse, Inc. ("Bon-Ton"). At the time of the purchase, the former owners of Bon-Ton would not sell the business name. Therefore, Mr. Connor used the name of Donnor Sales, Inc. On December 11,

1979, Mr. Connor acquired the use of the name of Bon-Ton and, on this date, petitioner's name was changed back to Bon-Ton.

7. Bon-Ton engaged in the installation and fabrication of glass and aluminum. This involved replacing glass in automobiles and buildings and fabricating the glass and aluminum used in the erection of new buildings or new additions to buildings.

8. In the course of conversations with employees of the Audit Division, Mr. Connor was advised that he should attempt to recover previously uncollected taxes from his customers. When Mr. Connor followed this advice, he lost four preferred customers.

9. At the hearing, Mr. Connor stated that he did not challenge the accuracy of the assessment issued to Bon-Ton.¹

10. At the hearing, petitioner argued, among other things, that: correct information regarding those transactions upon which he should be collecting sales tax was unavailable; that the publications of the Department of Taxation and Finance were either misleading or erroneous; that one should not have to consult reference materials to determine one's sales tax liability; that his right to accurate information under the Freedom of Information Act was denied; and that his attempts, through telephone communications with employees of the Department of Taxation and Finance, to obtain guidance as to which transactions were taxable were unavailing.

¹ Mr. Connor did argue briefly that he should not have been assessed tax on the purchase of drill bits which were used in the production of an "electronic finger". However, when asked if he wished to submit documents substantiating this argument, he stated that he did not wish to pursue the point.

CONCLUSIONS OF LAW


A. That petitioner has not submitted any evidence which would establish that he is not liable for the sales and use taxes assessed. Moreover, petitioner's arguments do not provide any basis for cancelling the tax assessed. That is, the difficulty which petitioner experienced in obtaining information is not a basis warranting cancellation of the assessment.

B. That the petition of Bon-Ton of Syracuse, Inc. formerly Donnor Sales, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 7, 1982 is sustained.

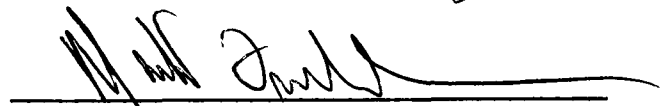
DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 168 869

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to	
Bon-Ton of Syracuse, Inc.	
Street and No.	
Formerly Donnor Sales, Inc.	
P.O., State and ZIP Code	
C/O Mr. Donald Connor	
Postage	\$
448 Burnett Ave.	
Certified Fee	
Syracuse, NY 13203	
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	