

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Riteway Meat Processing, Inc.
and Francis Vanderbosch, Individually : 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 6/1/77-5/31/80. :

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 August, 1984, he served the within notice of Decision by certified mail upon Riteway Meat Processing, Inc., and Francis Vanderbosch, Individually the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Riteway Meat Processing, Inc.
and Francis Vanderbosch, Individually
7968 Ridge Rd.
Gasport, NY 14067

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 August, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

August 9, 1984

Riteway Meat Processing, Inc.
and Francis Vanderbosch, Individually
7968 Ridge Rd.
Gasport, NY 14067

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	:	
	:	
RITEWAY MEAT PROCESSING, INC.	:	DECISION
AND FRANCIS VANDENBOSCH, INDIVIDUALLY	:	
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, 1977	:	
through May 31, 1980.	:	

Petitioners, Riteway Meat Processing, Inc. and Francis Vandembosch, individually, 7968 Ridge Road, Gasport, New York 14067, 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, 1977 through May 31, 1980 (File Nos. 34144 and 34724).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on December 8, 1983 at 2:45 P.M. Petitioner Riteway Meat Processing, Inc. appeared by its president, Francis Vandembosch and Francis Vandembosch appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether certain sales by Riteway Meat Processing, Inc. constituted sales of meat or whether the corporation provided cutting services.

FINDINGS OF FACT

1. Petitioner Riteway Meat Processing, Inc. ("Riteway") was primarily engaged in retail sales of meat. Riteway also performed slaughtering and custom cutting services.

2. On March 20, 1981, 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 Riteway covering the period June 1, 1977 through May 31, 1980 for taxes due of \$9,791.15, plus interest of \$1,678.93, for a total of \$11,470.08. On the same date, a notice in the same amount was also issued to petitioner Francis Vanderbusch (sic) as officer of Riteway.

3. Riteway executed a consent extending the period of limitations for assessment of sales and use taxes for the period in issue to March 20, 1981.

4. Riteway's sales journal segregated sales into two categories, store sales and processing sales. Store sales are over-the-counter sales of meat from a display case. Processing sales consist typically of sales of quarters or halves of animals. Prior to July 1, 1979, the sales journal reflected only a total sales amount. Invoices are issued for the processing sales. The Audit Division examined sales invoices for the fiscal year ended June 30, 1980 and found them to be incomplete except for the months of January, 1980 and March, 1980. Many of the invoices examined showed several hundred pounds of meat sold for \$.15 to \$.18 per pound. Others indicated charges for butchering services only. The Audit Division concluded that the charge of \$.15 to \$.18 was actually for cutting services rather than the sale of meat because the price was not indicative of the price of meat. This conclusion was further supported by the other invoices showing meat sold for \$1.39 to \$1.89 per pound. All sales of this type, as well as those sales for butchering services, were considered taxable and were accumulated for the months of January, 1980 and March, 1980. These sales amounted to \$7,073.23, or 17.7 percent of gross sales for the audit period. Because of the incomplete records, the Audit Division applied the taxable ratio determined for the two months in which invoices were complete to

gross sales for the audit period, to arrive at taxable sales of \$139,873.67. Petitioner did not report any taxable sales and therefore was held liable for taxes due of \$9,791.15.

5. The invoices in dispute involved transactions with customers who owned livestock and had Riteway slaughter and cut the animal to order. Riteway argued that it actually purchased the animal from the customer and resold the processed animal as meat. Riteway's president, Francis Vandembosch, testified that instead of paying the customer for the purchase of the animal, the customer was given a credit against the sales price per pound of the processed and cut meat and that the invoice price per pound reflected the difference.

6. Riteway's books and records did not support Mr. Vandembosch's testimony. The Audit Division reviewed the disbursements records for four months preceding the test months and found no purchases from the individuals named on the sales invoices.

7. Riteway also argued that sales tax was paid on expenses incurred in processing the animals and that to require sales tax to be collected on cutting services would result in double taxation.

8. Francis Vandembosch did not contest his personal liability for any taxes determined due from Riteway.

CONCLUSIONS OF LAW

A. That the sales at issue herein constitute sales of meat processing and cutting services and that such services are subject to the tax imposed pursuant to section 1105(c)(2) of the Tax Law. Riteway failed to collect the tax on such sales and therefore is liable for the tax required to be collected in accordance with section 1133(a) of the Tax Law.


B. That expense purchases used in Riteway's business operations (Finding of Fact "7") were not purchased for resale within the meaning and intent of section 1101(b)(4)(i)(B) of the Tax Law. Moreover, petitioner did not show that such expense purchases were used in any other manner which would make them exempt from the sales tax. 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 from the receipts [20 NYCRR 526.5(e)].


C. That the petition of Riteway Meat Processing, Inc. and Francis Vandembosch is denied and the notices of determination and demand for payment of sales and use taxes due issued March 20, 1981 are sustained.

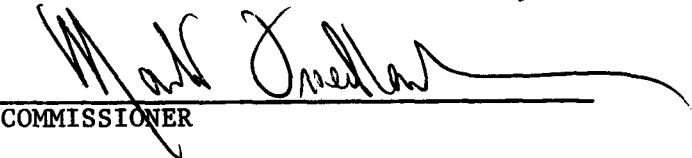
DATED: Albany, New York

AUG 09 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

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

CERTIFIED

P 440 977 381

MAIL



REASON CHECKED

Unclaimed Addressee unknown
Insufficient Address
No such street
No such office in state
Do not remail in this envelope

RETURNED TO SENDER
Unclaimed Addressee unknown
Insufficient Address
No such street
No such office in state
Do not remail in this envelope

Riteway Meat Processing, Inc.
and Francis Maeder, Inc., Individually
7968 Ridge Rd.
Gasport, NY 14067

number 14067
state NY
in this envelope

Refused

22

DATE
☐ HOLD

CLAIM CHECK NO. 0195670

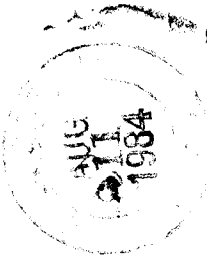
DATE

RETURN

2ND NOTICE

1ST NOTICE

DATE
V-9988 MAIL BY
UNITED STATES



State of New York - Department of Taxation and Finance
Tax Appeals BureauREQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>8/15/84</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>J.C. - Dec. - 8/9/84</i>
Name <i>Riteway Meat Processing, Inc.</i>	
Address <i>and Francis Van der Bosch, individually</i> <i>7968 Redgo Rd.</i> <i>Sasport, N.Y. 14067</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>Refused</i>

Searched by <i>DP</i>	Section	Date of Search <i>8/15/84</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

P 440 977 381

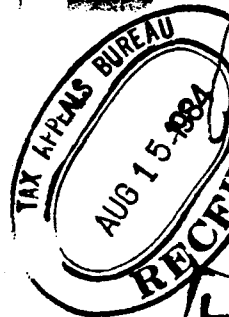
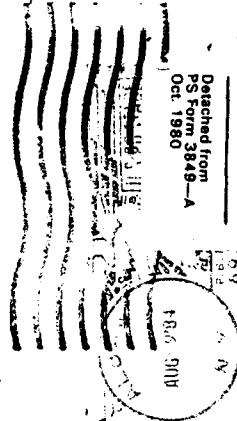
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

Processing, etc.

Sent to	
Street and No.	<i>Riteway Mat</i>
P.O., State and ZIP Code	<i>7968 Ridge Rd. Gasport, NY 14067</i>
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



CLAIM CHECK NO. **019573**

DATE ☐ HOLD

1ST NOTICE

2ND NOTICE

RETURN

Detached from PS Form 3848-A Oct. 1980

Refused

RZ

REASON CHECKED
☒ Unclaimed
☐ Addressee unknown
☐ Insufficient Address
☐ No such street
☐ No such office in state
☐ Do not remain in this envelope

REASON FOR RETURN TO SENDER
☒ Unclaimed
☐ Addressee unknown
☐ Insufficient Address
☐ No such street
☐ No such office in state
☐ Do not remain in this envelope

Unclaimed by Riteway Mat, Inc. and Franchisees, Individually and Collectively, 7968 Ridge Rd., Gasport, NY 14067.

TA 26 (9-79)
 STATE OF NEW YORK
 State Tax Commission
 TAX APPEALS BUREAU
 STATE CAMPUS
 ALBANY, N. Y. 12227

CERTIFIED
P 440 977 381
MAIL

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

August 9, 1984

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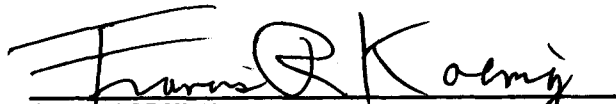
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DATED: Albany, New York

STATE TAX COMMISSION

AUG 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER