

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lido Terrace, 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 Periods Ended November 30, :
1974 through November 30, 1980. :

In the Matter of the Petition :
of :
Emil Rausman :
Officer of Lido Terrace, Inc. : AFFIDAVIT OF MAILING
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 Ended November 30, :
1977 through November 30, 1980. :

In the Matter of the Petition :
of :
Yolanda Fischer :
Officer of Lido Terrace, 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 Periods Ended November 30, :
1974 through November 30, 1980. :

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 21st day of August, 1985, he served the within notice of Decision by certified mail upon Lido Terrace, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lido Terrace, Inc.
c/o Yolanda Fischer
201 W. 74th St.
New York, NY 10023

Page 2

Affidavit of Mailing

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
21st day of August, 1985.

David Paruchuck

Ann R. Adams
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
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the Tax Law for the Periods Ended November 30, :
1974 through November 30, 1980. :

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 21st day of August, 1985, he served the within notice of Decision by certified mail upon Arthur Sachs, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur Sachs
262-45 60 Road
Little Neck, NY 11362

Page 2

Affidavit of Mailing

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
21st day of August, 1985.

David Parckuch

Conrad J. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

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

August 21, 1985

Lido Terrace, Inc.
c/o Yolanda Fischer
201 W. 74th St.
New York, NY 10023

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: Petitioner's Representative
Arthur Sachs
262-45 60 Road
Little Neck, NY 11362
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Lido Terrace, Inc.	:	
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Sales and Use Taxes under Articles 28 and 29 of	:	
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<hr/>		
In the Matter of the Petition	:	
of	:	
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<hr/>		
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State of New York :

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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 21st day of August, 1985, he served the within notice of Decision by certified mail upon Emil Rausman, Officer of Lido Terrace, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Emil Rausman
Officer of Lido Terrace, Inc.
2 Grandview Ave.
Munsey, NY

Page 2

Affidavit of Mailing

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Sworn to before me this
21st day of August, 1985.

David Parcluck

Annie O. Hagedorn

Authorized to administer oaths
pursuant to Tax Law section 174

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

August 21, 1985

Emil Rausman
Officer of Lido Terrace, Inc.
2 Grandview Ave.
Munsey, NY

Dear Mr. Rausman:

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.

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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
Arthur Sachs
262-45 60 Rd.
Little Neck, NY 11362
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
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In the Matter of the Petition :
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1974 through November 30, 1980. :
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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 21st day of August, 1985, he served the within notice of Decision by certified mail upon Yolanda Fischer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Yolanda Fischer
201 W. 74th St.
New York, NY 10023

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Affidavit of Mailing

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
21st day of August, 1985.

David Paruch

James R. Heywood

Authorized to administer oaths
pursuant to Tax Law section 174

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

August 21, 1985

Yolanda Fischer
201 W. 74th St.
New York, NY 10023

Dear Ms. Fischer:

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.

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Building #9, State Campus
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Phone # (518) 457-2070

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STATE TAX COMMISSION

cc: Petitioner's Representative
Arthur Sachs
262-45 60 Rd.
Little Neck, NY 11362
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
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of Sales and Use Taxes under Articles 28 and 29 :
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In the Matter of the Petition :
of :
EMIL RAUSMAN :
Officer of Lido Terrace, 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 Periods Ended :
November 30, 1977 through November 30, 1980. :

DECISION

In the Matter of the Petition :
of :
YOLANDA FISCHER :
Officer of Lido Terrace, 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 Periods Ended :
November 30, 1974 through November 30, 1980. :

Petitioner, Lido Terrace, Inc., c/o Yolanda Fischer, 201 West 74th Street, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods ended November 30, 1974 through November 30, 1980 (File No. 35534).

Petitioner, Emil Rausman, Officer of Lido Terrace Inc., 2 Grandview Avenue, Munsey, New York, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods ended November 30, 1977 through November 30, 1980 (File No. 44118).

Petitioner, Yolanda Fischer, Officer of Lido Terrace, Inc., 201 West 74th Street, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods ended November 30, 1974 through November 30, 1980 (File No. 35615).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 2, 1984 at 9:30 A.M., with all briefs to be submitted by January 4, 1985. Petitioners appeared by Arthur Sachs, P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUES

I. Whether the Audit Division may issue an assessment of sales and use taxes for quarterly periods previously assessed, where the second assessment is based on new information.

II. Whether there is reasonable cause for the remission of penalties and interest in excess of the statutory minimum.

FINDINGS OF FACT

1. On August 20, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner Lido Terrace, Inc. ("Lido Terrace") assessing sales and use taxes for the periods ending November 30, 1974 through August 31, 1977 in the amount of \$84,402.61, plus

penalty of \$2,539.55 and interest of \$26,217.57, for a total amount due of \$113,159.73.

2. On August 20, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Lido Terrace for the periods ending November 30, 1977 through May 31, 1979 in the amount of \$97,472.21, plus penalty of \$10,924.55 and interest of \$8,789.58, for a total amount due of \$117,186.34.

3. On September 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Lido Terrace assessing sales and use taxes due for the periods ended November 30, 1977 through November 30, 1980 in the amount of \$119,347.51, plus penalty of \$24,232.68 and interest of \$26,037.51, for a total amount due of \$169,617.70. The amounts assessed were in addition to the amounts assessed on the notices issued August 20, 1979.

4. On August 20, 1979, the Audit Division issued two notices of determination and demand for payment of sales and use taxes due to petitioner Yolanda Fischer as treasurer of Lido Terrace. The first Notice assessed tax due for the periods ending November 30, 1974 through August 31, 1977 of \$84,402.61, plus penalty of \$2,539.55 and interest of \$26,217.57, for a total amount due of \$113,159.73. The second Notice assessed tax due for the periods ending November 30, 1977 through May 31, 1979 of \$97,472.21, plus penalty of \$10,924.55 and interest of \$8,789.58, for a total amount due of \$117,186.34.

5. On September 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Yolanda Fischer as treasurer of Lido Terrace for the periods ending November 30, 1977 through November 30, 1980. The Notice assessed tax due of \$77,027.63, plus penalty of

\$15,103.36 and interest of \$16,506.24, for a total amount due of \$108,637.23.

The amounts assessed were in addition to the amounts assessed on the notices issued on August 20, 1979.

6. On September 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Emil Rausman as vice-president of Lido Terrace assessing total tax due of \$161,825.25, plus penalty of 36,302.76 and interest of \$45,908.74, for a total amount due of \$244,036.75 for the periods ending November 30, 1977 through November 30, 1980.

7. Petitioner Lido Terrace failed to file quarterly sales and use tax returns for the periods ended November 30, 1977 and February 28, 1978. It filed New York State and local sales and use tax returns for other periods in issue and on numerous occasions reported taxable sales only, without reporting gross sales.

8. Lido Terrace, by its treasurer, Yolanda Fischer, had executed consents extending the statute of limitations for assessing sales and use taxes for the period September 1, 1974 through August 31, 1978 to December 20, 1979.

9. During the periods in issue, Lido Terrace was a resort hotel which contained several catering halls and approximately two hundred seventy-five rooms for guests.

10. In the course of an audit of Lido Terrace the Audit Division was provided with a general ledger for the years 1974 and 1975. However, the amounts in the general ledger were not totalled. The Audit Division was also provided with monthly bank statements for the year 1979.

11. The Audit Division requested records showing the number of catered affairs, but this was not provided. It also requested purchase invoices, which were not supplied until after the audit was completed.

12. In order to determine the amount of sales and use taxes due for the periods which were assessed on August 20, 1979, the Audit Division disallowed all exempt sales claimed and held all gross sales to be taxable.¹ Gross sales which had been reported for the periods ended November 30, 1975 through August 21, 1976 were carried forward to the corresponding period for each succeeding year covered by the assessment, with a 10% increase per year to allow for inflation.

13. With respect to the sales and use taxes which were assessed on September 20, 1981, the Audit Division utilized the gross sales reported for the periods ended November 30, 1974 through August 31, 1976 to determine the percentage of petitioner's annual sales allocable to a particular quarterly period. Thereafter, these percentages were applied to the Federal income tax returns of Lido Terrace, which had been made available after the prior notices were issued, to determine the gross sales for each quarterly period. These gross sales were also considered to be completely taxable since the Audit Division had not been provided with exemption certificates.

14. Since Lido Terrace did not produce any purchase invoices prior to the preparation of the notices issued September 20, 1981, the Audit Division concluded that all expenses of Lido Terrace, as projected by the Audit Division, were subject to use tax.

15. The Audit Division assessed additional taxes in its notices of September 20, 1981 on the basis of the calculated additional gross sales and expenses subject to use tax for all periods it concluded were not barred by the statute of limitations.

¹ Petitioners have not taken issue with this premise.

16. After the assessment dated September 20, 1981 was issued to Lido Terrace, the Audit Division reduced the amount of use tax assessed in this notice by \$4,231.99 based upon invoices produced by Lido Terrace disclosing that a portion of the sales tax assessed had been paid.

17. The assessments issued to the individual petitioners as persons required to collect tax for Lido Terrace were computed in the same manner as the assessment issued to Lido Terrace except that use tax was not assessed against the individuals.

18. At the hearing, petitioners' representative did not dispute the Audit Division's conclusion that Emil Rausman and Yolanda Fischer were persons required to collect tax of Lido Terrace. Further, petitioners did not question the amount of sales and use taxes assessed except with respect to the propriety of assessing periods which were previously assessed.

CONCLUSIONS OF LAW

A. That, where an assessment of sales and use tax has been issued, the Audit Division may nevertheless issue an additional assessment for the same period provided that the statute of limitations on assessment (Tax Law §1147) has not expired. Since the statute of limitations had not expired the assessment of sales and use tax based upon new information for quarterly periods previously assessed is not prohibited.

B. That Tax Law §1145 provides for the remission of penalty and interest in excess of the statutory minimum if the failure to remit or pay over sales and use tax was due to reasonable cause and not willful neglect.

C. That in view of the substantial discrepancy between the sales and use tax reported on the returns and the sales and use tax found due, petitioner has

failed to present reasonable cause for the remission of penalties or interest in excess of the statutory minimum.

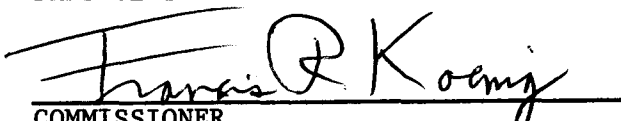
D. That the petitions of Lido Terrace, Inc., Emil Rausman and Yolanda Fischer are denied and, except as noted in Finding of Fact "16", the notices of determination and demands for payment of sales and use taxes due are sustained.

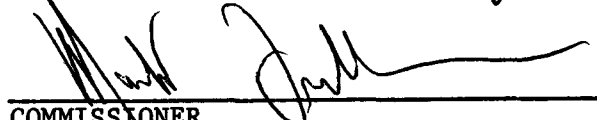
DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

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

CLAIM CHECK
NO.

740927

DATE

☐ HOLD



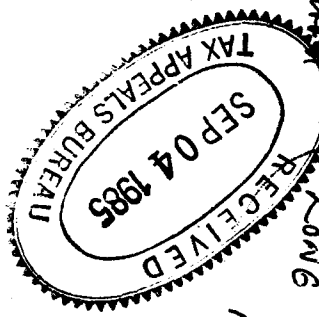
1ST NOTICE

2ND NOTICE

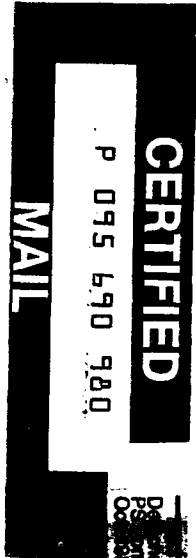
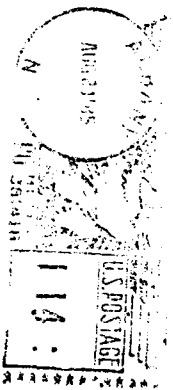
RETURN

Delivered from
PS Form 3849-A
October 1980

Ido Terrace, Inc.
c/o Yolanda Fischer Family
201 W. 74th St.
New York, NY 10023



10 W. Broadway
Long Beach N.Y. 11516



P 095 690 983

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	<i>Yolanda Fischer</i>	
Street and No.	<i>201 W 74th St</i>	
P.O., State and ZIP Code	<i>New York 10023</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		

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

P 095 690 982

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	<i>Long Beach</i>	
Street and No.	<i>Ido Terrace Inc.</i>	
P.O., State and ZIP Code	<i>Long Beach N.Y.</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		

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

P 095 690 980

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

Sent to <i>Lido Terrace Inc.</i>	
Street and No. <i>91 Williams Avenue</i>	
P.O., State and ZIP Code <i>201 W. 94th St</i>	
Postage <i>New York, NY 10025</i>	
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

P 095 690 981

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

Sent to <i>Arthur Sachs</i>	
Street and No. <i>212-45 60th Rd.</i>	
P.O., State and ZIP Code <i>Staten Island NY 10312</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



23

REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 9/5/85
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec. 8/21/85
Name Lido Terrace, Inc.	
Address c/o Yolanda Fischer 201 W. 74th St. New York, N.Y. 10023 Fwd. to: 10 W. B'may Long Beach, L.I., N.Y. 11516	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	Attempted Not Known

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

August 21, 1985

Lido Terrace, Inc.
c/o Yolanda Fischer
201 W. 74th St.
New York, NY 10023

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Arthur Sachs
262-45 60 Road
Little Neck, NY 11362
Taxing Bureau's Representative

STATE OF NEW YORK

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In the Matter of the Petition :
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EMIL RAUSMAN :
Officer of Lido Terrace, Inc. :
for Revision of a Determination or for Refund :
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November 30, 1977 through November 30, 1980. :

DECISION

In the Matter of the Petition :
of :
YOLANDA FISCHER :
Officer of Lido Terrace, Inc. :
for Revision of a Determination or for Refund :
of Sales and Use Taxes under Articles 28 and 29 :
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November 30, 1974 through November 30, 1980. :

Petitioner, Lido Terrace, Inc., c/o Yolanda Fischer, 201 West 74th Street, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods ended November 30, 1974 through November 30, 1980 (File No. 35534).

Petitioner, Emil Rausman, Officer of Lido Terrace Inc., 2 Grandview Avenue, Munsey, New York, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods ended November 30, 1977 through November 30, 1980 (File No. 44118).

Petitioner, Yolanda Fischer, Officer of Lido Terrace, Inc., 201 West 74th Street, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods ended November 30, 1974 through November 30, 1980 (File No. 35615).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 2, 1984 at 9:30 A.M., with all briefs to be submitted by January 4, 1985. Petitioners appeared by Arthur Sachs, P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUES

I. Whether the Audit Division may issue an assessment of sales and use taxes for quarterly periods previously assessed, where the second assessment is based on new information.

II. Whether there is reasonable cause for the remission of penalties and interest in excess of the statutory minimum.

FINDINGS OF FACT

1. On August 20, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner Lido Terrace, Inc. ("Lido Terrace") assessing sales and use taxes for the periods ending November 30, 1974 through August 31, 1977 in the amount of \$84,402.61, plus

penalty of \$2,539.55 and interest of \$26,217.57, for a total amount due of \$113,159.73.

2. On August 20, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Lido Terrace for the periods ending November 30, 1977 through May 31, 1979 in the amount of \$97,472.21, plus penalty of \$10,924.55 and interest of \$8,789.58, for a total amount due of \$117,186.34.

3. On September 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Lido Terrace assessing sales and use taxes due for the periods ended November 30, 1977 through November 30, 1980 in the amount of \$119,347.51, plus penalty of \$24,232.68 and interest of \$26,037.51, for a total amount due of \$169,617.70. The amounts assessed were in addition to the amounts assessed on the notices issued August 20, 1979.

4. On August 20, 1979, the Audit Division issued two notices of determination and demand for payment of sales and use taxes due to petitioner Yolanda Fischer as treasurer of Lido Terrace. The first Notice assessed tax due for the periods ending November 30, 1974 through August 31, 1977 of \$84,402.61, plus penalty of \$2,539.55 and interest of \$26,217.57, for a total amount due of \$113,159.73. The second Notice assessed tax due for the periods ending November 30, 1977 through May 31, 1979 of \$97,472.21, plus penalty of \$10,924.55 and interest of \$8,789.58, for a total amount due of \$117,186.34.

5. On September 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Yolanda Fischer as treasurer of Lido Terrace for the periods ending November 30, 1977 through November 30, 1980. The Notice assessed tax due of \$77,027.63, plus penalty of

\$15,103.36 and interest of \$16,506.24, for a total amount due of \$108,637.23.

The amounts assessed were in addition to the amounts assessed on the notices issued on August 20, 1979.

6. On September 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Emil Rausman as vice-president of Lido Terrace assessing total tax due of \$161,825.25, plus penalty of 36,302.76 and interest of \$45,908.74, for a total amount due of \$244,036.75 for the periods ending November 30, 1977 through November 30, 1980.

7. Petitioner Lido Terrace failed to file quarterly sales and use tax returns for the periods ended November 30, 1977 and February 28, 1978. It filed New York State and local sales and use tax returns for other periods in issue and on numerous occasions reported taxable sales only, without reporting gross sales.

8. Lido Terrace, by its treasurer, Yolanda Fischer, had executed consents extending the statute of limitations for assessing sales and use taxes for the period September 1, 1974 through August 31, 1978 to December 20, 1979.

9. During the periods in issue, Lido Terrace was a resort hotel which contained several catering halls and approximately two hundred seventy-five rooms for guests.

10. In the course of an audit of Lido Terrace the Audit Division was provided with a general ledger for the years 1974 and 1975. However, the amounts in the general ledger were not totalled. The Audit Division was also provided with monthly bank statements for the year 1979.

11. The Audit Division requested records showing the number of catered affairs, but this was not provided. It also requested purchase invoices, which were not supplied until after the audit was completed.

12. In order to determine the amount of sales and use taxes due for the periods which were assessed on August 20, 1979, the Audit Division disallowed all exempt sales claimed and held all gross sales to be taxable.¹ Gross sales which had been reported for the periods ended November 30, 1975 through August 21, 1976 were carried forward to the corresponding period for each succeeding year covered by the assessment, with a 10% increase per year to allow for inflation.

13. With respect to the sales and use taxes which were assessed on September 20, 1981, the Audit Division utilized the gross sales reported for the periods ended November 30, 1974 through August 31, 1976 to determine the percentage of petitioner's annual sales allocable to a particular quarterly period. Thereafter, these percentages were applied to the Federal income tax returns of Lido Terrace, which had been made available after the prior notices were issued, to determine the gross sales for each quarterly period. These gross sales were also considered to be completely taxable since the Audit Division had not been provided with exemption certificates.

14. Since Lido Terrace did not produce any purchase invoices prior to the preparation of the notices issued September 20, 1981, the Audit Division concluded that all expenses of Lido Terrace, as projected by the Audit Division, were subject to use tax.

15. The Audit Division assessed additional taxes in its notices of September 20, 1981 on the basis of the calculated additional gross sales and expenses subject to use tax for all periods it concluded were not barred by the statute of limitations.

1 Petitioners have not taken issue with this premise.

16. After the assessment dated September 20, 1981 was issued to Lido Terrace, the Audit Division reduced the amount of use tax assessed in this notice by \$4,231.99 based upon invoices produced by Lido Terrace disclosing that a portion of the sales tax assessed had been paid.

17. The assessments issued to the individual petitioners as persons required to collect tax for Lido Terrace were computed in the same manner as the assessment issued to Lido Terrace except that use tax was not assessed against the individuals.

18. At the hearing, petitioners' representative did not dispute the Audit Division's conclusion that Emil Rausman and Yolanda Fischer were persons required to collect tax of Lido Terrace. Further, petitioners did not question the amount of sales and use taxes assessed except with respect to the propriety of assessing periods which were previously assessed.

CONCLUSIONS OF LAW

A. That, where an assessment of sales and use tax has been issued, the Audit Division may nevertheless issue an additional assessment for the same period provided that the statute of limitations on assessment (Tax Law §1147) has not expired. Since the statute of limitations had not expired the assessment of sales and use tax based upon new information for quarterly periods previously assessed is not prohibited.

B. That Tax Law §1145 provides for the remission of penalty and interest in excess of the statutory minimum if the failure to remit or pay over sales and use tax was due to reasonable cause and not willful neglect.

C. That in view of the substantial discrepancy between the sales and use tax reported on the returns and the sales and use tax found due, petitioner has

failed to present reasonable cause for the remission of penalties or interest in excess of the statutory minimum.

D. That the petitions of Lido Terrace, Inc., Emil Rausman and Yolanda Fischer are denied and, except as noted in Finding of Fact "16", the notices of determination and demands for payment of sales and use taxes due are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1985


PRESIDENT


COMMISSIONER


COMMISSIONER