

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Hunts Point Palace, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period 6/1/79-5/31/82.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he/she served the within notice of Decision by certified mail upon Hunts Point Palace, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hunts Point Palace, Inc.
953 Southern Blvd.
Bronx, NY 10459

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
19th day of June, 1986.

Janet M. Snay

Daniel J. Rarrell
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 19, 1986

Hunts Point Palace, Inc.
953 Southern Blvd.
Bronx, NY 10459

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

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	:	
	:	
HUNTS POINT PALACE, 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 June 1, 1979	:	
through May 31, 1982.	:	

Petitioner, Hunts Point Palace, Inc., 953 Southern Boulevard, Bronx, New York 10459, 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, 1979 through May 31, 1982 (File No. 41658).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 21, 1986 at 9:00 A.M. Petitioner appeared by its President, Melvin Stier. The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUE

Whether the charge for the rental of a room for a place of assembly is subject to tax when such charge is in connection with the sale of food.

FINDINGS OF FACT

1. Petitioner, Hunts Point Palace, Inc., was engaged in the rental of banquet rooms for such functions as weddings, parties and meetings. For certain of these functions, usually weddings, petitioner provided food.

2. On December 20, 1982, 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 petitioner covering the period June 1, 1979 through May 31, 1982 for taxes due of \$774.60, plus interest of \$183.92, for a total of \$958.52.

3. Melvin Stier, on behalf of petitioner, executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1979 through November 30, 1979 to December 20, 1982.

4. On audit, the Audit Division examined petitioner's sales contracts for the entire audit period. Some contracts provided for the rental of a room alone, while others had an additional, separately-stated charge for food or beverages. Petitioner collected sales tax only on the charge for food and beverages. The Audit Division determined that in those instances where petitioner furnished food or beverages, it was acting as a caterer and the total charge to the customer, including the room rental, was subject to tax. The additional taxable sales amounted to \$9,640.00 with tax due thereon of \$774.60.

5. Petitioner had no kitchen facility on the premises for preparing food. If petitioner was required under a contract to supply food for an affair, the food was ordered from an outside caterer and delivered directly to the room rented by the customer. Petitioner did not furnish personnel for serving food or drinks. The customer was responsible for service, decorations and equipment, other than tables and chairs.

CONCLUSIONS OF LAW

A. That section 1105(d)(i) of the Tax Law imposes a tax upon:

"The receipts from every sale of...food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments...or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers."

Subdivision (1) of said section further provides, "in all instances where the sale is for consumption on the premises where sold."


B. That the sales contracts at issue herein provided for both the rental of a room and for either the sale of food alone or for food and drink to be consumed on petitioner's premises. The charge for the rental of the room was an "other charge" to the customer in conjunction with the sale of food and drink and thus became part of the receipts subject to the tax imposed under section 1105(d)(1) of the Tax Law.

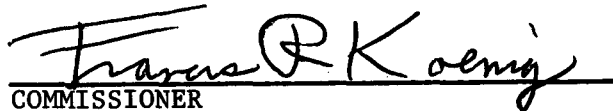
C. That the petition of Hunts Point Palace, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1982 is sustained.

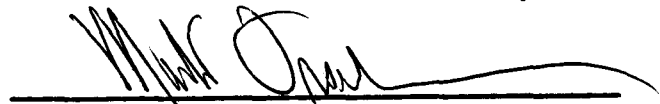
DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 319 372 823

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to <i>Hunts Point Palace Inc.</i>	
Street and No. <i>453 Southern Blvd.</i>	
P.O., State and ZIP Code <i>Bronx, N.Y. 10459</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	