

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Meislins Restaurant & Janitorial Supplies, 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 9/1/80-5/31/83.

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 23rd day of December, 1986, he/she served the within notice of Decision by certified mail upon Meislins Restaurant & Janitorial Supplies, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Meislins Restaurant & Janitorial Supplies, Inc.
P.O. Box 8
Whitesboro, NY 13492

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
23rd day of December, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Meislins Restaurant & Janitorial Supplies, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
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under Article(s) 28 & 29 of the Tax Law :
for the Period 9/1/80-5/31/83.

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 23rd day of December, 1986, he served the within notice of Decision by certified mail upon Daniel S. Cohen, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Daniel S. Cohen
258 Genesee Street
Utica, NY 13502

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
23rd day of December, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

December 23, 1986

Meislins Restaurant & Janitorial Supplies, Inc.
P.O. Box 8
Whitesboro, NY 13492

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

Petitioner's Representative:
Daniel S. Cohen
258 Genesee Street
Utica, NY 13502

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MEISLINS RESTAURANT & JANITORIAL SUPPLIES, 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 September 1, 1980
through May 31, 1983.

Petitioner, Meislins Restaurant & Janitorial Supplies, Inc., P.O. Box 8, Whitesboro, New York 13492, 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, 1980 through May 31, 1983 (File No. 48979).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on August 12, 1986 at 1:15 P.M. Petitioner appeared by Daniel S. Cohen, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed certain claimed exempt sales.

FINDINGS OF FACT

1. On December 20, 1983, as the result of a field audit, the Audit Division issued against petitioner, Meislins Restaurant & Janitorial Supplies, Inc., a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period September 1, 1980 through May 31, 1983, asserting a tax due of \$8,883.64 plus minimum interest.

2. Petitioner owned and operated a retail and wholesale merchandising business specializing in candy crafting supplies, such as chocolate and molds, restaurant supplies and janitorial supplies. Sales were made by three avenues: traveling salesmen solicited orders, primarily from retail establishments; customers purchased items through a mail order catalogue; and both wholesale and retail cash sales were made from a storefront location in petitioner's warehouse.

3. On audit, it was determined that petitioner's books and records were in good condition. Gross sales and exempt sales made by petitioner's salesmen and through mail order were accepted as reported. However, the auditor determined that petitioner's records were inadequate to substantiate claimed exempt cash sales made at its store.

4. Petitioner's in-store cash sales were recorded on a cash register, and a tape was maintained. Cashiers were responsible for segregating exempt and taxable sales. Exempt sales included sales for resale and sales made to exempt organizations such as the Boy Scouts, the American Legion and various church organizations. The cash register tape generated a record of total taxable sales and total exempt sales and identified individual sales by product category. Petitioner wrote out invoices or sales receipts for all of its customers, but only kept a copy when a sale of candy was made. The auditor deemed the register tapes inadequate to verify that tax was collected on all nonexempt sales.

5. The auditor selected three days from each year in the audit period to use as a test period. Exempt sales shown on the register tapes were matched against invoices where available. Using this method, the auditor was able to substantiate all claimed exempt candy sales. However, since petitioner did not retain a copy of the customer's receipt for non-candy sales, they were all

deemed unsubstantiated. In the nine day test period, 37.679 percent of petitioner's total sales were found to be unsubstantiated exempt sales. Accordingly, that percentage of claimed exempt cash sales was disallowed in each sales tax quarter under consideration, resulting in additional taxable sales of \$182,383.00 with a tax due on that amount of \$8,454.57.

6. The auditor also found sales tax due of \$429.07 on recurring purchases and purchases of fixtures and equipment. That portion of the assessment is not in issue.

7. Petitioner produced testimonials from individual customers who claimed to have made purchases from petitioner during the audit period. The testimonials do not identify the products purchased, the price of the individual items or the dates on which the alleged purchases occurred. Some of the customers claimed to be tax exempt organizations; others did not. Petitioner requested that these statements be deemed memoranda of sales in accordance with 20 NYCRR 533.2(b).

CONCLUSIONS OF LAW

A. That the sales tax is imposed on the receipts, unless specifically exempted, of every retail sale of tangible personal property (Tax Law §1105[a]). There is a presumption in the law that all such receipts are subject to tax, and the burden of proving otherwise is placed upon the person required to collect the tax (Tax Law §1132[c]).

B. That inasmuch as petitioner had no verifiable records to establish that certain of its cash sales were exempt from sales tax by virtue of having been sold either to a tax exempt organization or for resale, petitioner has not overcome the presumption that such sales were subject to tax.

C. That 20 NYCRR 533.2(b) provides that:

"(1) Every person required to collect tax...must keep records of every sale...and all amounts paid, charged or due thereon.... The records must contain a true copy of each:

(i) sales slip, invoice, receipt, contract, statement or other memorandum of sale[.]"


D. That the testimonials solicited by petitioner from its customers are not "true cop[ies] of each...memorandum of sale". Accordingly, they are not sufficient to substantiate petitioner's claimed exempt sales.


E. That the petition of Meislins Restaurant & Janitorial Supplies, Inc. is denied in full, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on December 20, 1983 is sustained.


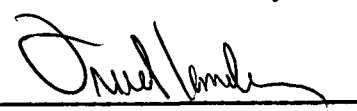
DATED: Albany, New York

STATE TAX COMMISSION

DEC 23 1986


PRESIDENT


COMMISSIONER

 
COMMISSIONER

P 319 117 231

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 Meislins Restaurant + Janitorial Supplies Inc	
Street and No. P.O. Box 8	
P.O. State and ZIP Code Whitesboro, N.Y. 13492	
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	

P 319 117 232

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 Daniel S. Cohen	
Street and No. 258 Genessee Street	
P.O. State and ZIP Code Utica, N.Y. 13502	
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	