

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
WYE Valley Catering, Ltd. :

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 20th day of February, 1987, he/she served the within notice of Decision by certified mail upon WYE Valley Catering, Ltd. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

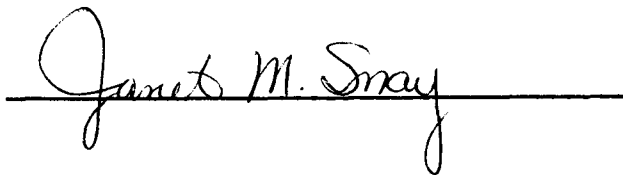
WYE Valley Catering, Ltd.
c/o Neil Heap
P.O. Box 812
Greenwood Lake, NY 10925

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
20th day of February, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

February 20, 1987

WYE Valley Catering, Ltd.
c/o Neil Heap
P.O. Box 812
Greenwood Lake, NY 10925

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	:	
	:	
WYE VALLEY CATERING, LTD.	:	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, WYE Valley Catering, Ltd., c/o Neil Heap, P.O. Box 812, Greenwood Lake, New York 10925, 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. 63334).

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 October 23, 1986 at 9:15 A.M. Petitioner appeared by its president, Neil Heap. The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUES

I. Whether a separately stated charge for music or entertainment by a caterer is subject to tax.

II. Whether the Audit Division properly imposed interest on the unpaid sales tax liability found due on a field audit.

FINDINGS OF FACT

1. Petitioner, WYE Valley Catering, Ltd., operated a catering business which, in addition to preparing and serving food and drink, provided music for the catered affair.

2. On May 20, 1985, 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 \$4,358.38, plus interest of \$2,291.18, for a total of \$6,649.56.

3. Mr. Neil Heap, petitioner's president, executed consents extending the period of limitation for assessment of sales and use taxes for the period June 1, 1979 through February 28, 1982 to May 20, 1985.

4. On audit, the Audit Division compared sales tax collected as shown in the cash receipts journal with the sales tax paid with returns filed and found that there was an inadvertent underpayment of \$1,082.04. Nontaxable sales were analyzed for the month of July 1981 (petitioner executed an Audit Method Election whereby it agreed to the Audit Division's use of a test period audit method). The Audit division disallowed certain nontaxable sales which resulted in the following areas of deficiency:

(a) music	-	\$2,665.19
(b) barman, flowers	-	195.41
(c) extraordinary sale	-	368.36

The Audit Division also determined that petitioner failed to pay tax of \$47.38 on the purchase of printed materials. The only area of disagreement is with the tax assessed on the charge for music.

5. Petitioner entered into contracts with certain customers whereby it provided musical entertainment as part of the catering services. Petitioner charged the customer separately for the music on the invoice and did not collect sales tax on such charge. The Audit Division took the position that the charge for music is taxable when it is in connection with the sale of food and drink by a caterer.

6. Petitioner argued that interest should not be applicable to the disagreed portion of the tax due (\$2,665.19) because of the delay by the Audit Division in concluding the audit.

CONCLUSIONS OF LAW

A. That section 1105(d)(1) 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...." (Emphasis supplied.)

B. That petitioner's charge for musical entertainment 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 section 1145(a)(1)(iii) of the Tax Law provides that the Tax Commission may remit penalty and that portion of interest that exceeds the minimum for reasonable cause. However, there is no statutory provision to remit, cancel or abate minimum interest.

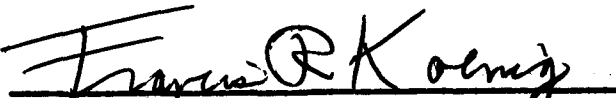
D. That the petition of WYE Valley Catering, Ltd. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 20, 1985 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER