

9/06/02

IN RE: REGENCY CATERERS, INC.

DOCKET NO: 36LSMERZZ9990

36WMMERZZ9840

STATEMENT OF RECORD:

1. Regency Caterers, Inc. (hereafter "Petitioner") filed a Petition for Review of Wage Tax and liquor sales tax assessments on March 8, 2000.
2. After several continued hearing dates at the requests of the parties, a public hearing was held before the Tax Review Board on May 28, 2002. At the close of the hearing the Board announce its decision to abate one half of the interest and all of the penalty for both the Wage Tax and Liquor Sales tax assessments.
3. Petitioner filed an appeal to the Philadelphia Court of Common Pleas.

FINDINGS OF FACT:

1. Petitioner was a banquet, catering and dance hall located at 2374 Orthodox St. Philadelphia, Pa. They catered social affairs such as weddings, christenings and sports banquets. Approximately 20 to 24 affairs occurred per month. Pricing for the food was done on a per person basis.
2. Petitioner did not have a Pa. Liquor License at any time during the years in question. However, when a customer requested liquor be served at an affair being catered by Petitioner, Petitioner would accommodate them by purchasing the liquor at a Pa. state store at the retail level which included paying state sales tax. Petitioner would then bring it into their facility, hire bartenders to serve it and charge the customers for the cost of the liquor plus a charge for the mixes and condiments used with the alcoholic beverages and a cost for the bartenders.
3. For most events where liquor was to be served, Petitioner made the decisions as to what and how much to buy.
4. John C. Calhoun, an owner of the business during the tax years in question testified that the company was reimbursed dollar for dollar for all liquor purchases, without a mark up or profit on these purchases for the company. He would give the receipts for the liquor purchases to the customer who would pay him that amount. He did not keep copies of the receipts. There was no separate accounting record for this item in any of Petitioner's records or books.
5. The amounts received for the liquor were included in Petitioner's gross receipts. In addition, an amount for liquor was included in Petitioner's records under cost of goods sold. This amount was included on Petitioner's federal tax form, known as 1120, as well.
6. The City introduced a sampling of customer contracts provided by Petitioner at the audit. These contracts, Exhibit R-1, were by and between Petitioner and various customers for their varied events. Mr. Calhoun was the signer on behalf of Petitioner for these contracts. Each of these contracts specified the items and services to be provided by Petitioner for the event listed on the contract.  
As examples, in the contract for a catered event for the Bethel Lutheran Church, there was an itemized listing that included the terms "wine & beer (cash)". In a contract for

a baby shower, there was listing of “Beer 6.50 Pitcher Wine 10.00 Carafe”. In contracts for both a wedding and a Holy Communion party, the contract listing stated “Open Bar Included”. These contracts each listed the cost per person for the services to be provided by Petitioner. This per person cost was generally higher for those contracts where some kind of bar was listed in the services to be provided by Petitioner.

7. The City auditor, Gloria McCauley, testified as to how she arrived at the assessment for the Liquor Sales Tax. She testified that she reviewed Petitioner’s sampling of client contracts (Exh. R-1) and a cash receipts journal prepared by Petitioner’s accountant that had a breakdown of Petitioner’s receipts by category (Exh. R-3). The contracts led her to the conclusion that Petitioner was charging for liquor on a per person basis. Ms. McCauley then used the category labeled “BAR” and the receipts under that category for the year 1997, as provided by Petitioner, to calculate the amount of Liquor Sales Tax she deemed to be due by Petitioner. Ms. McCauley divided the 1997 “bar” receipts into the total gross receipts, arrived at a 10% figure and used that 10% to also assess Liquor Sales Tax for 1995 and 1996. She concluded that all expenses listed under this category was for the purchase of alcoholic beverages, either beer or liquor.
8. Mr. Calhoun testified that the Bar figure in the cash receipts journal was only for ancillary items and services related to the serving of liquor, such as the cost of the bartender, mixes, fruits and sodas. The cost of a bartender’s services would be between \$30 and \$60 for a party.
9. There was no separate category or set of records to document liquor sales, liquor purchases or any customer reimbursements for liquor purchases. Petitioner did not have any receipts for the purchases of alcoholic beverages for these parties nor any documentation to show a direct cost reimbursement from the clients. All liquor purchases were made with cash. Any receipts for the purchases of alcoholic beverages were given to petitioner’s customers. There was no separate accounting of customer payments for the liquor.
10. A further review of Petitioner’s cash receipts journal (Exh. R-3) showed that in many instances the costs attributed to the category labeled “BAR” was a significant cost in itself and a significant amount in comparison to the food cost for the party. For example, the party listed under the name “LOCAL 500” incurred costs of \$1,271.03 for food and \$800.00 for the bar; “ST. MARTIN’S REUNION” incurred costs of \$1,117.76 for food and \$670.00 for the bar; “DEPARTMENT OF RECREATION” incurred costs of \$925.00 for food and \$555.00 for the bar.
11. Petitioner admitted, through its attorney, that the transaction involving liquor was a sale. Notes of Testimony, Page 73.
12. Petitioner provided no evidence as to the 1991 Wage Tax assessment. Due to the age of the assessment, Petitioner was unable to locate any records or files and therefore requested that the Board consider an abatement of interest and penalty.

## CONCLUSIONS OF LAW:

### 1. Liquor Sales Tax Assessment

The Liquor Sales Tax is authorized pursuant to The Philadelphia Code Chapter 19-1805 on behalf of the School District of Philadelphia. The tax is imposed on "sales at retail in the District of liquor and malt and brewed beverages which are sold or dispensed ...by any hotel, restaurant, or club, or other person licensed by the Commonwealth of Pennsylvania to sell or dispense liquor or malt or brewed beverages." (Code §19-1805(2)).

A "sale" is defined as "any transfer at retail for consideration in any manner or by any means whatsoever of liquor and malt and brewed beverages, but the term shall not include any transaction which is subject to tax by the Commonwealth of Pennsylvania under the Tax Reform Code of 1971. (Code §19-1805(d)). Neither party contended that the transactions involved in this matter were subject to tax under the Tax Reform Code of 1971. Petitioner admitted that sales or transfers of liquor and malt and brewed beverages were part of Petitioner's business.

"The total consideration, in any manner or by any means whatsoever, for the sale/transfer at retail defined in section 101(h), of liquor and malt or brewed beverages is fully taxable. In a situation such as Petitioner's, where one price includes both liquor and non-liquor sales, "an allocation of the price must be made to reflect the proper retail sales price attributable to the liquor and malt or brewed beverages." Liquor Sales Tax Regulations §102(b).

Petitioner put forth several arguments to challenge this assessment. It's primary argument was that there were no liquor sales as defined by the ordinance, that Petitioner was merely purchasing the liquor as a courtesy and time saving device for its customers who then reimbursed Petitioner dollar for dollar in an off the books transaction.

However, Petitioner could not document this practice. To the contrary, Petitioner's records and tax returns contradicted Mr. Calhoun's testimony. Petitioner added its liquor costs to its totals of cost of goods sold, receipts from the transfer or sale of the liquor to its customers were added to Petitioner's gross receipts, the cash receipts journal had a category labeled "Bar" that appeared to have dollar amounts that went beyond the costs for ancillary bar costs, and the customer contracts listed the cost and serving of alcoholic beverages among the services included in the per person cost of the affairs where there was to be a bar.

There was no evidence, other than Mr. Calhoun's bare testimony to suggest that anything other than the sale of liquor for Petitioner's catered affairs was occurring.

It is the responsibility of the vendor to maintain appropriate books and records to document any liquor sales and to differentiate taxable from non-taxable sales in its books and records. Regulations Section 301(d). The City's auditor used only the books and

records kept and provided by Petitioner to determine Petitioner's Liquor Sales Tax liability. Petitioner admitted to liquor sales and had a cash receipts journal with a column for bar expenses. While Petitioner did not have any receipts to show the cost or sale of the liquor, its books and records did document the purchase price through inclusion in the cost of goods sold and the sale price in the cash receipts journal.

The tax is to be collected from the purchaser at the time of the sale and remitted to the Department of Revenue. Petitioner should have collected this tax from its customers when the sale of liquor was included in the services provided by Petitioner. Having failed to do so, Petitioner is liable for the tax that should have been collected. Regulations Section 301(b).

Petitioner's second argument was that even if the transactions did constitute a sale of liquor in a manner covered by the ordinance, Petitioner could not be assessed the tax because it did not have a license to sell liquor and therefore did not meet the definition of vendor.

It is not within the purview of the Tax Review Board to determine whether Petitioner was required by the Commonwealth of Pennsylvania to have a license to engage in the sale of liquor. However, the Board cannot be asked to look the other way when a taxpayer attempts to use a loophole, such as the failure to secure required licenses, to avoid its tax liability to the City. Petitioner did not prove that a license was not required for its activities.

It is the conclusion of the Tax Review Board that Petitioner's activities with respect to its liquor sales fall directly within the Liquor Sales Tax Ordinance, Section 19-1805 of The Philadelphia Code.

## 2. Wage Tax Assessment

Petitioner offered no evidence to establish that the Wage Tax assessment was incorrect. It had no books or records to challenge the assessment. The City offered information from Petitioner's own tax return, the annual reconciliation for 1991, and the City's record of payments received for that year to prove that Petitioner had not paid the full amount due. The amount still owed was the principal amount of \$273.27, with interest due of \$247.31 and penalty due of \$461.14 as of the hearing date.

Petitioner admitted that it was unable to document payment of the tax amount and conceded the principal assessment.

Concurred:

Daniel Saidel, Esq., Chairman

Derrick Johnson, Vice-Chairman

Una Vee Bruce

Joseph Ferla

Wade Stevens