

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ARCHIE Mac DONALD
D/B/A B & M SUPPLY CO.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use Taxes
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~(Year(s))~~ period 8/1/65;
through 8/31/69

State of New York
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of December , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Archie MacDonald
D/B/A B & M Supply Co.
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Archie MacDonald
D/B/A B & M Supply Co.
Main Street
Old Forge, New York
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

16th day of December , 1971.

Harold J. Funnaro

Rae Zimmerman

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STATE TAX COMMISSION

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State of New York
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of December , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon William P.
Christy, Jr. Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William P. Christy, Jr., Esq.
Syracuse Kemper Bldg.
Syracuse, New York 13202

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

16th day of December , 1971.

Gracie J. J. J.

Rae Zimmerman

STATE TAX COMMISSION

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 8/1/65 through 8/31/69. :

Commission at Utica, New York, on November 18, 1970, before
L. Robert Leisner, Hearing Officer.

The taxpayer was represented by William P. Christy, Jr., Esq., and the Sales Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was the determination of the sales tax by the Sales Tax Bureau based on a projection of taxable sales from taxable purchases correct?

FINDINGS OF FACT

1. The Sales Tax Bureau issued a Notice of Determination and Demand for sales tax due against the taxpayer who operated a general grocery and supply store at Old Forge, New York.
2. The taxpayer timely filed an application for a revision of the determination of the sales tax and for a hearing.
3. The Sales Tax Bureau proposed an increase in sales tax. For the year 1968, the examiner examined the purchases of taxable items and nontaxable items and computed the percentage of taxable

items of purchases as being 29.7%. He then applied this percentage to the gross sales of the taxpayer to arrive at his proposed taxable sales and computed the sales tax on his proposed taxable sales figure.

4. The examiner's procedure was based on the assumption that the markup of taxable and nontaxable items was the same. This assumption was incorrect.

5. The examiner computed purchases from invoices as being \$160,153.00 but did not look at or reconcile his computation with taxpayer's books of account showing total purchases of \$183,650.92. The parties differed on the correct amount of purchases but the evidence was inconclusive on both sides and additionally is not the decisive factor herein.

6. There were some sales for small groups of items under 25 cents which might be taxable, but they were inconsequential.

7. The gross profit on meats was 25%, the gross profit on produce was 30%. The markup on soap powders was 12% to 14%, dog and cat food 14% or 15%, washing solutions about 7% to 9%, facial soaps 10% to 12%, beer and pop about 18%. There were many other items of a taxable nature which had about a 20% markup. The lower markup for taxable items indicated that the actual taxable sales were far less than the examiner's projected taxable sales based on the assumption that the markup of taxable and nontaxable purchases was the same.

8. The taxpayer kept a daily record of his sales tax. The taxables were put up first on one key, for a subtotal and there was a tax key on the register. The taxpayer took a percentage of the taxables and entered it on the cash register tape and the sales tax liability was computed and recorded each day.

CONCLUSIONS OF LAW

A. The sales tax examiner's computation of taxable sales was based on an erroneous projection of taxable purchases.

B. The tax returned by the taxpayer is correct. The taxpayer's application is granted.

C. It is determined that there are no sales taxes, penalties or interest due from the applicant for the periods August 1, 1965 through August 31, 1969 under Notice No. 90,471,552 and Identification No. 150516651.

DATED: Albany, New York
December 16, 1971.

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koenig

COMMISSIONER