

STATE OF NEW YORK  
STATE TAX COMMISSION

*Meyers, Deborah*  
*Sales & Use*  
*1971*

In the Matter of the Petition

of  
DEBORAH MEYERS

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

For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year/s)~~ period August 1, 1965  
through January 22, 1969.

State of New York  
County of Albany

Martha Funaro , 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 27th day of October , 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Deborah Meyers

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Deborah Meyers  
1675 Grand Concourse  
Bronx, 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

27th day of October , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DEBORAH MEYERS

For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ periods August 1, 1965  
through January 22, 1969

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

State of New York  
County of Albany

Martha Funaro , 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 27th day of October , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Irvin Wolf (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Irvin Wolf  
2840 Sedgewick Avenue  
Bronx, New York 10468  
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

27th day of October , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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|   |   |               |
|---|---|---------------|
| In the Matter of the Application        | : |               |
| of                                      | : |               |
| DEBORAH MEYERS                          | : | DETERMINATION |
| for a Hearing to Review a Determination | : |               |
| of Sales and Use Taxes imposed under    | : |               |
| Articles 28 and 29 of the Tax Law for   | : |               |
| the period August 1, 1965 through       | : |               |
| January 22, 1969.                       | : |               |

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Deborah Meyers filed an application under sections 1138 and 1250 of the Tax Law for a review of a determination of sales and use taxes imposed under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through January 22, 1969.

A hearing was duly held before Nigel G. Wright, Hearing Officer, on May 13, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City. The applicant was represented by her son-in-law, Herbert Berkowitz. The Sales Tax Bureau was represented by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel). The record of such hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the sales tax returns of a grocery store were correctly computed.

FINDINGS OF FACT

1. Mrs. Meyers owned a small grocery store in the Bronx, New York and operated it together with her husband. The store sold general grocery items including beer and cigarettes. On advice of an accountant, applicant estimated the sales tax due at 5% of gross receipts and paid the tax on that basis.

2. Mrs. Meyers had a cash register in her store but it was not equipped to run a duplicate tape and she did not otherwise keep a record of each sale and whether or not each sale was taxable.

At the end of each day she would enter the total sales for the day, and total purchases paid for, in a "day book".

3. On audit by the Sales Tax Bureau, the gross receipts stated on applicant's returns were found to be accurate. However an examination of purchase invoices revealed that over 20% of purchases were of taxable items. The determination under review computes a tax due on 20% of applicant's gross receipts.

4. The determination under review is dated June 20, 1969, and finds a tax due of \$1,736.88 with interest of \$199.09, computed at 6% per annum to June 20, 1969, for a total of \$1,935.97.

#### CONCLUSIONS OF LAW

The applicant's returns were not correctly computed and the determination under review must be upheld. The amount of gross receipts is not in issue and the applicant has the burden of proof to show the amount of his nontaxable sales (Tax Law section 1132(c); in re Garfield Bag & Stationary Co. Inc. 42 Fed. Supp. 708). The applicant's records were not in sufficient detail to be audited for each taxable and nontaxable sale. (See Sales Tax Bureau Record Keeping Instructions ST 155 dated July, 1965 and July, 1967 P.M. N.Y. State and Local Taxes ¶23,017, ¶21,395.10.) It was, therefore, necessary for the Sales Tax Bureau to estimate the tax from purchases (Tax Law, section 1138). The estimate made is reasonable.

#### DETERMINATION

The determination under review is correct and is sustained with such further interest, if any, at no more than 6% per year, as provided under section 1145(a) of the Tax Law.

DATED: Albany, New York

*October 27, 1971.*

STATE TAX COMMISSION

*Norman Gelman*  
COMMISSIONER

*Bruce Mancey*  
COMMISSIONER

*Milton Kerner*  
COMMISSIONER