

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BETHVIEW STATIONERS INC.

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

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period(s)  
December 1, 1966 - November 30, 1969

State of New York  
County of Albany

Lynn Wilson , 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 25th day of April , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon BETHVIEW STATIONERS INC. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Morris Schwartzberg, Pres. Bethview Stationers Inc. 726 Old Bethpage Road Old Bethpage, New York 11803 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

25th day of April , 19 72

Rae Zimmerman

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

BETHVIEW STATIONERS INC.

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For a Redetermination of a Deficiency or  
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Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ Period(s)  
December 1, 1966 - November 30, 1969

State of New York  
County of Albany

Lynn Wilson, 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 25th day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon GERALD KAPLAN, ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Gerald Kaplan, C.P.A.  
300 South Oyster Bay Road  
Syosset, Long Island, New York 11791

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

25th day of April, 1972

Karl J. [Signature]

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227  
AREA CODE 518  
457-2655, 6, 7

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**April 25, 1972**

**Morris Schwartzberg, Pres.  
Bethview Stationers Inc.  
726 Old Bethpage Road  
Old Bethpage, New York 11803**

**Dear Mr. Schwartzberg:**

Please take notice of the **DETERMINATION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)  
**1138 & 1243** of the Tax Law any proceeding  
in court to review an adverse decision must be commenced  
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or  
refund allowed in accordance with this decision or  
concerning any other matter relating hereto may be  
addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

  
**Lawrence A. Newman**  
Hearing Officer

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
BETHVIEW STATIONERS INC. : DETERMINATION  
for Revision of a Determination or for :  
Refund of Sales and Use Taxes under :  
Articles 28 and 29 of the Tax Law for :  
the Periods from December 1, 1966 :  
through November 30, 1969. :  
:

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Bethview Stationers Inc. applied for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods from December 1, 1966 through November 30, 1969.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York, on December 14, 1971.

The applicant was represented by Gerald D. Kaplan, C.P.A. The Sales Tax Bureau was represented by Edward H. Best, Esq. (Solomon Sies, Esq., of Counsel).

#### ISSUE

Whether the additional sales and resulting tax were properly supported by the field audit procedures and findings, and whether the vendor has sustained the burden of disproving the findings of additional taxable sales.

#### FINDINGS OF FACT

1. The applicant, Bethview Stationers, Inc., filed New York State sales and use tax returns for the periods from December 1, 1966

through November 30, 1969.

2. On March 3, 1970, the applicant signed a consent extending the time for assessment of the periods in issue to March 20, 1971.

3. On December 28, 1970, the Sales Tax Bureau issued a Notice and Demand, numbered 90,744,107, in the amount of \$3,811.39, plus penalties and interest. The applicant had filed the equivalent of an application for revision of the determination or for refund, and a demand for hearing.

4. The applicant operated a retail stationery store located in Old Bethpage, New York. The sales included newspapers, magazines, candy, greeting cards, party goods, stationery, toys, cigarettes and cigars, etc. A field audit was made of the applicant's books and records, which consisted of cash receipts and disbursements books, purchase invoices, and federal tax returns.

5. The cash receipts and disbursements records of the applicant contained gross receipts totals which agreed with the amounts reported by the applicant on its federal income tax and New York sales and use tax returns.

6. The field auditor made an analysis of the purchase invoices for the months of May, 1968 and September, 1969. An individual computation was made of the markup of various items sold by comparing each cost with the current selling price. This test was confined to taxable categories of sold items. The result was applied to the purchases for the audit period of taxable categories of merchandise to determine the total taxable sales.

7. The applicant, as a rebuttal computation, submitted a prepared schedule of costs during the month of September, 1969, based upon supplier, rather than item sold, upon which he noted his recollection of the markup for this merchandise. These results were then projected over the periods in issue. An estimated allowance was claimed for thefts of money on the premises. This computation resulted in additional taxable sales of \$67,330.00, and additional sales taxes of \$1,827.54, for the periods in issue.

8. The computation by the Sales Tax Bureau of additional taxable sales and the resulting sales taxes due was properly supported by the field audit procedures and findings.

9. The applicant has failed to sustain the burden of proving that the additional taxable sales and resulting additional sales tax as computed by the Sales Tax Bureau were incorrect.

DETERMINATION

A. The additional sales and resulting sales taxes due were correctly and properly computed based upon the audit of the applicant's books and records.

B. The penalties and interest computed on the notice and demand are reduced to simple interest at 6% per annum.

C. The notice and demand, as modified in item (B) above, is sustained, and the application for revision of the determination is denied.

DATED: Albany, New York

*April 25, 1972.*

STATE TAX COMMISSION

*Norman Galbraith*  
\_\_\_\_\_  
COMMISSIONER

*George Masley*  
\_\_\_\_\_  
COMMISSIONER

*William Korman*  
\_\_\_\_\_  
COMMISSIONER