

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HELMAR PHARMACY, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales & Use Taxes
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~XXXXXX~~ Period ~~(S)~~
December 1, 1969 through May 31, 1974

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December, 1977, ~~she~~ she served the within
Notice of Determination by ~~(certified)~~ mail upon Helmar Pharmacy, Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Helmar Pharmacy, Inc.
3209 Horseblock Road
Medford New York 11763

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 Postal Service within the State of New York.

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

13th day of December, 1977.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HELMAR PHARMACY, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use Taxes :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
December 1, 1969 through May 31, 1974.

State of New York
County of Albany

John Huhn , 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 13th day of December , 1977 , she served the within
Notice of Determination by (~~XXXXXX~~) mail upon Emanuel Kuflik, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Emanuel Kuflik, CPA
c/o Goldberg, Abramowitz, Kuflik & Kauder
75 Maiden Lane
New York, New York 10038
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 Postal Service within the State of New York.

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

13th day of December , 19 77.

Janet Mack

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
December 13, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Helmar Pharmacy, Inc.
3209 Horseblock Road
Medford, New York 11763

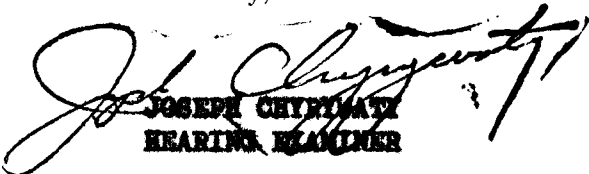
Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


JOSEPH CHYNOWETH
HEARING EXAMINER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
HELMAR PHARMACY, 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 Period December 1, 1969 through :
May 31, 1974. :

Applicant, Helmar Pharmacy, Inc., 3209 Horseblock Road, Medford, New York 11763, filed an application 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 December 1, 1969 through May 31, 1974 (File No. 11174).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 30, 1977 at 10:45 A.M. Applicant appeared by Emanuel Kuflik, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the audit procedures employed by the Sales Tax Bureau during the audit of Helmar Pharmacy, Inc.'s books and records, and the results therefrom, properly reflected applicant's sales tax deficiency.

FINDINGS OF FACT

1. On April 8, 1975, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Helmar Pharmacy, Inc., for taxes due of \$16,529.15, plus penalty and interest, for the period December 1, 1969 through May 31, 1974. An informal conference was held on December 11, 1975 which resulted in a reduction of the additional taxes due to \$15,421.08.

2. In performing the audit, the sales tax auditor tested purchases for the year 1971 and determined that 60.8% of total purchases were for taxable merchandise. This percentage was applied to the total purchases for the period September 1, 1969 through August 31, 1972, in order to determine total taxable purchases for this period. (Applicant did not produce sales or purchase records for the period subsequent to August 31, 1972) The resultant figure was then marked up 57.7%, as per the conducted, weighted markup test, to arrive at audited taxable sales. Audited taxable sales, less taxable sales reported by applicant for this period, represented a margin of error of 108%.

3. The sales tax auditor applied the margin of error of 108% to total reported taxable sales for the entire audit period (December 1, 1969 through May 31, 1974) so as to determine the additional taxes due.

4. The Sales Tax Bureau's computations did not allow for shoplifting, employee theft, spoilage and breakage.

5. Applicant contended that the audit conducted by the Sales Tax Bureau was inaccurate, inasmuch as it failed to consider other relevant factors which had occurred in Helmar Pharmacy, Inc.'s business during the years in question. The weighted markup test was alleged to be inaccurate since it failed to acknowledge the fact that until 1972, the pharmacy was run as a discount store which supposedly resulted in a much lower markup, as well as a different proportion of taxable sales. By its own analysis for the year 1971, applicant computed that taxable purchases should have been 44.5 percent. However, no records were presented to verify this percentage.

6. During the years in question, the principal and owner of Helmar Pharmacy, Inc. was ill. The applicant alleged that this resulted in declining sales and increased thefts. During the period in question, three percent of the applicant's taxable sales as computed by the Sales Tax Bureau were found to be losses due to theft and pilferage.

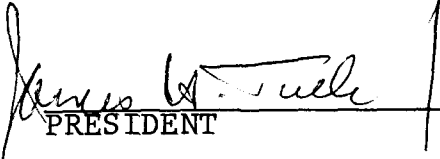
CONCLUSIONS OF LAW

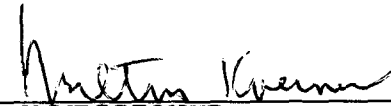
A. That the audit of applicant, Helmar Pharmacy, Inc.'s books and records by the Sales Tax Bureau and the results therefrom, did not give consideration to losses due to shoplifting, employee theft, spoilage and breakage and, therefore, did not accurately reflect the additional sales taxes due.

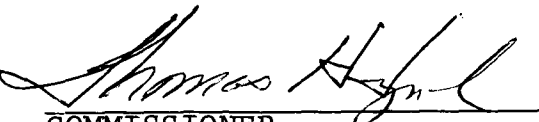
B. That the application of Helmar Pharmacy, Inc. is granted to the extent of reducing audited taxable sales by three percent; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 8, 1975, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
December 13, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER