

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CELEGOUDI CORP.

d/b/a BLUE SKY DINER

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXXXX~~ Period(s)  
6/1/70 through 5/31/73.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, 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 April, 1977, ~~she~~ served the within  
Notice of Determination by (~~certified~~) mail upon Celegoudi Corp.  
d/b/a Blue Sky Diner  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Celegoudi Corp.  
d/b/a Blue Sky Diner  
21-17 49th Avenue  
Long Island City, NY 11101  
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  
~~XXXXX~~ last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

27th day of April, 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CELEGOUDI CORP.

d/b/a BLUE SKY DINER

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~Year(s)~~ Period(s)  
6/1/70 through 5/31/73.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27th day of April, 1977, he served the within  
Notice of Determination by ~~(certified)~~ mail upon Archibald Braunfeld  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Archibald Braunfeld, CPA  
21 East 40th Street  
New York, NY 10016  
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

27th day of April, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 27, 1977

TELEPHONE: (518) **457-1723**

Calagoudi Corp.  
d/b/a Blue Sky Diner  
21-17 49th Avenue  
Long Island City, NY 11101

Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **1138 and 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

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

Very truly yours,

**Frank J. Puccio**  
**Supervisor of**  
**Small Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
CELEGOUDI CORP.	:	DETERMINATION
d/b/a BLUE SKY DINER	:	
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 June 1, 1970 through May 31,	:	
1973.	:	

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Applicant, Celegoudi Corp. d/b/a Blue Sky Diner, 21-17 49th Avenue, Long Island City, New York 11101, 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 June 1, 1970 through May 31, 1973.

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 26, 1976. Applicant appeared by Archibald Braunfeld, C.P.A. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Paul Rosenkranz, Esq. of counsel).

ISSUE

Whether the audit of books and records of applicant, Celegoudi Corp. d/b/a Blue Sky Diner, for the periods June 1, 1970 through May 31, 1973 was properly conducted.

FINDINGS OF FACT

1. Applicant, Celegoudi Corp. d/b/a Blue Sky Diner, filed New York State sales and use tax returns for the periods June 1, 1970 through May 31, 1973.

2. On September 3, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Celegoudi Corp. d/b/a Blue Sky Diner, asserting additional sales tax due for the period June 1, 1970 through May 31, 1973 in the sum of \$11,651.24, plus penalty and interest of \$5,393.24. The afore-said deficiency resulted from an audit of applicant's books and records for said period and does not include payments due on unpaid returns.

3. The audit performed by the Sales Tax Bureau was conducted as follows:

A. A test of guest checks dated February 26, 1974 was performed in order to determine the percentage of food sales with individual selling prices of less than \$1.00, and to

determine if sales tax was being overcharged. This test resulted in the determination that 2.86% of the food sales were sold at less than \$1.00 (applicable to periods prior to July 1, 1971 only), and that sales tax was being overcharged on food sales at the rate of .55% of sales tax collected.

B. Total food purchases during the audit period were marked up by 100.00% to arrive at gross food sales. The markup of 100.00% was used on the basis of the sales tax auditor's experience with similar establishments.

C. A purchase markup test was performed, for the month of May 1973, on wine, liquor and beer purchases, and resulted in combined wine and liquor markup of 320.65% and beer markup of 175.92%.

4. As a result of various conferences held subsequent to the audit and the issuance of the Notice of Determination and Demand, the Sales Tax Bureau revised the audited deficiency as follows:

A. The 2.86% of food sales sold at less than \$1.00 was increased to 12.00% in order to reflect increases in selling price caused by inflation.

B. The wine and liquor markup of 320.65% was reduced to 265.00% and the beer markup of 175.92% was reduced to 160.70%.

C. A credit in the sum of \$255.00 was applied against audited sales tax due in order to allow for beverages consumed by the principals and employees.

The aforesaid revisions resulted in a reduction of the audited deficiency from \$11,651.24 to \$8,300.00.

5. Applicant, Celegoudi Corp. d/b/a Blue Sky Diner, posts all sale tax monies collected to a sales tax accrual account and computes quarterly taxable sales by dividing the total amount of sales tax collected by the taxing rate. Applicant contends that this method of computing taxable sales accounts for over collection of sales tax; and, therefore, the overcharge rate computed by the auditor is not applicable.

6. Applicant, Celegoudi Corp. d/b/a Blue Sky Diner, did not present books and records in support of its position that the audit was conducted improperly.

#### CONCLUSIONS OF LAW

A. That the method applicant, Celegoudi Corp. d/b/a Blue Sky Diner, used to compute taxable sales reported resulted in

the remittance of sales tax over collections, and, therefore, the overcharge rate of .55%, amounting to \$256.02 of the sales tax assessed, is not applicable.

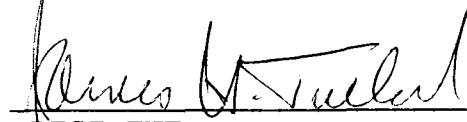
B. That the audit performed by the Sales Tax Bureau, with the exception of the overcharge computation, was properly conducted and the applicant, Celegoudi Corp. d/b/a Blue Sky Diner, has failed to sustain the burden of proof necessary to disprove the findings therefrom.

C. That the Notice of Determination and Demand is modified in accordance with the revisions of the Sales Tax Bureau and paragraph A above, resulting in a deficiency in the sum of \$8,043.48.

D. That the application of Celegoudi Corp. d/b/a Blue Sky Diner is denied and the Notice of Determination and Demand issued on September 3, 1975, as modified, is sustained.

DATED: Albany, New York  
April 27, 1977

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER