

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
C.B.C. GROCERIES, INC. and  
ELEANOR CORNEY, as Officer  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~XXXXXX~~ Period(s)  
3/1/69 through 12/25/72

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Marsina Donnini, 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 22 day of August, 1977, she served the within Notice of Determination by ~~(XXXXXX)~~ mail upon C.B.C. Groceries, Inc. and Eleanor Corney, as officer ~~(XXXXXX)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: C. B. C. Groceries, Inc. & Eleanor Corney  
155-24 Jewel Avenue  
c/o Knight  
Apt. 6-B Flushing, New York 11367  
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 ~~(XXXXXX)~~ ~~(XXXXXX)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

22 day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

**August 22, 1977**

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

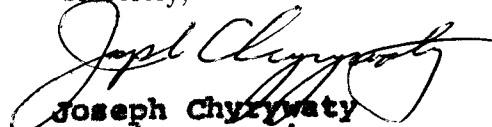
**C.B.C. Groceries, Inc. & Eleanor Corney**  
**155-24 Jewel Avenue**  
**c/o Knight**  
**Apt. 6-B**  
**Flushing, New York 11367**

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 Chyrywaty**  
**Hearing Examiner**

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

## STATE TAX COMMISSION

Applicants, C.B.C. Groceries, Inc. and Eleanor Corney, as officer, 155-24 Jewel Avenue, c/o Knight, Apt. 6-B, Flushing, New York 11367, 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 March 1, 1969 through December 25, 1972. (File No. 10057).

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 March 31, 1977, at 9:15 A.M. Applicants appeared by Eleanor Corney. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

I. Whether the Sales Tax Bureau, in the absence of adequate records, properly determined the taxable sales of applicant, C.B.C. Groceries, Inc.

II. Whether applicant, Eleanor Corney, was a "person required to collect tax" within the meaning of section 1131(1) of the Tax Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On March 8, 1974, the Sales Tax Bureau issued Notices of Determination and Demand for Payment of Sales and Use Taxes Due against C.B.C. Groceries, Inc. and Eleanor Corney.

2. These notices were issued in accordance with the findings of a sales tax field audit. On audit, the Sales Tax Bureau determined that the corporation's taxable sales were 40% of gross sales. This percentage was based on verbal information supplied by Eleanor Corney since the books and records of C.B.C. Groceries, Inc. were destroyed in a fire shortly after the business was discontinued in December, 1972.

3. Applicant, Eleanor Corney, submitted purchase invoices which indicated that C.B.C. Groceries, Inc. made purchases for resale of taxable items (beer, cigarettes and gum) of \$12,395.64, for the year 1972. No other books or records were available.

4. Applicant, Eleanor Corney, took over the operation of C.B.C. Groceries, Inc. upon the demise of her father, Frank Busch, in February, 1971, and, as of that date, became a responsible officer or employee of C.B.C. Groceries, Inc. The applicant was not a responsible officer or employee prior to February, 1971.

5. That the Sales Tax Bureau properly determined the corporation's taxable sales for the period March 1, 1969 through December 25, 1972. In making this determination it must be noted that the purchases made during 1972 of \$12,395.64, which were subsequently to be taxed as retail sales, far exceeded the taxable sales reported for any four quarters during the period under audit.

6. That the applicant, Eleanor Corney, was a "person required to collect tax" within the meaning and intent of section 1131(1) of the Tax Law during the period February 1, 1971 through December 25, 1972.

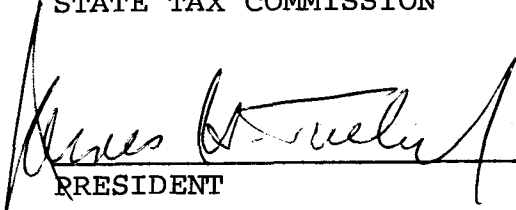
7. That the application of C.B.C. Groceries, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due for tax due in the sum of \$7,773.77 issued March 8, 1974 is sustained.

8. That the application of Eleanor Corney alone is granted to the extent of reducing the tax that she personally owes from \$7,773.77 to \$3,913.51 which represents tax due from February 1, 1971 through December 25, 1972 since she was only the responsible officer for that period of time, and that the tax due shall be together with such interest as may be lawfully owing; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use

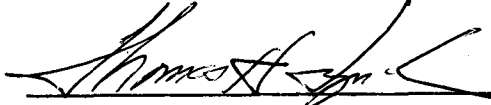
Taxes Due issued March 8, 1974; and that, except as so granted,  
the application is in all other respects denied.

DATED: Albany, New York  
August 22, 1977

STATE TAX COMMISSION

  
RESIDENT

  
COMMISSIONER

  
COMMISSIONER