

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CROSS-COUNTY JEWELERS, INC. and
GENE GORDON AND MILTON GORDON
INDIVIDUALLY AND AS OFFICERS
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)~~
August 1, 1970 through November 30, 1974.

AFFIDAVIT OF MAILING

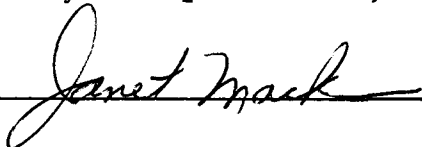
State of New York
County of Albany

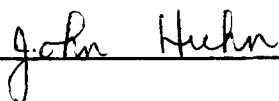
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of September, 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Cross-County Jewelers,
Inc. and Gene Gordon & Milton Gordon
~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Cross-County Jewelers, Inc. &
Gene Gordon & Milton Gordon, Individually
and as Officers
21 Mall Walk
Yonkers, New York 10704
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)~~
~~XXXXXX~~ 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

22nd day of September, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CROSS-COUNTY JEWELERS, INC. and : AFFIDAVIT OF MAILING
GENE GORDON AND MILTON GORDON :
INDIVIDUALLY AND AS OFFICERS :
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 (X) :
August 1, 1970 through November 30, 1974.

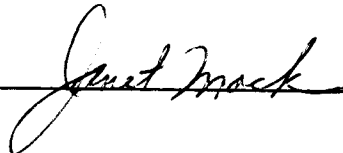
State of New York
County of Albany

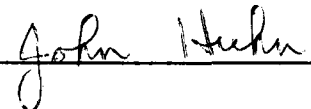
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of September , 1977, ~~he~~ served the within
Notice of Determination by ~~(corrected)~~ mail upon George Mandel
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
George Mandel, CPA
as follows: Seidman & Seidman
One North Broadway
White Plains, New York 10601
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

22nd day of September , 19 77





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CROSS-COUNTY JEWELERS, INC. and : AFFIDAVIT OF MAILING
GENE GORDON AND MILTON GORDON
INDIVIDUALLY AND AS OFFICERS :
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 ~~(X)~~ :
August 1, 1970 through November 30, 1974.

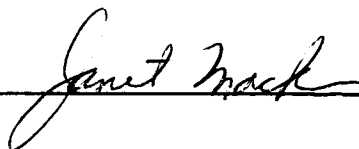
State of New York
County of Albany

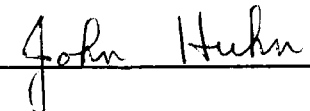
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of September, 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Kalmon V. Gallop
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Kalmon V. Gallop, Esq.
1345 Avenue of the Americas
New York, New York 10019
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

22nd day of September, 1977.







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

September 22, 1977

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

**Cross-County Jewelers, Inc. &
Gene Gordon & Milton Gordon, Individually
and as Officers
21 Mall Walk
Yonkers, New York 10704**

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,

**John J. Sollecito
Director
Tax Appeals Bureau**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE TAX COMMISSION

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 21, 1976 at 2:45 P.M. and continued before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 21, 1977 at 9:45 A.M. Petitioner appeared by George Mandell, CPA, and Kalmon V. Gallop, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Arthur R. Rosen, Esq., of counsel.)

ISSUES

I. Whether the Sales Tax Bureau correctly determined the percentage of mark-up utilized by petitioner in the sale of merchandise.

II. Whether the Sales Tax Bureau correctly determined the percentage of petitioner's gross sales which represented a given mark-up.

III. Whether the Sales Tax Bureau correctly determined the amount of inventory shrinkage to be deducted from the petitioner's purchases for the audit period.

FINDINGS OF FACT

1. On July 24, 1975, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment on Sales and Use Taxes Due against petitioner, Cross-County Jewelers, Inc., and Gene Gordon and Milton Gordon, individually and as officers. It asserted on additional tax due based upon alleged unreported taxable sales of \$748,400.34. The additional tax due, including penalty and interest, totalled \$71, 169.70.

2. Petitioner is a medium-size retail jewelry store which began business on January 8, 1954. Petitioner employs a certified public accounting firm to conduct a monthly audit and to prepare all statements and tax returns. Petitioner reports on the accrual basis of accounting. Its books are kept on a calendar year basis.

3. Petitioner maintains the following books and records:

- a. Cash receipt books
- b. Cash Disbursements book
- c. Purchase Journal
- d. General Ledger (year 1971 and 1972 ledgers lost)
- e. ST-100's and U.S. Federal corporate tax returns
- f. Sales and Purchase invoices

4. Petitioner's accountant prepared sales tax returns by taking the three month gross sales figures as per the books, (which include sales tax), and deducting the sales tax figures. The balance is reported as taxable sales at the statutory rate. Petitioner's gross sales per its books were in substantial agreement with Federal corporate tax returns and ST-100's filed.

5. The Sales Tax Bureau auditor in conducting the audit employed a procedure whereby items sold by the petitioner were divided into two categories, namely those items selling for less than \$250.00, and those items with a cost to the petitioner of \$250.00 or more.

6. Items with a cost to the petitioner approximately in the range of \$150.00 to \$250.00 would not be taken into account by the audit procedure utilized by the Sales Tax Bureau.

7. Petitioner did not make available adequate records (as required by section 1135 of the Tax Law) on items of merchandise with a cost to the petitioner of \$250.00 or more.

8. As agreed to by both parties, petitioner had total purchases during the audit period of \$1,094,625.00.

9. Inventory shrinkage was 7.5% of adjusted purchases computed as follows:

Adjustment allowed by Sales Tax Bureau	\$	<u>81,400.00</u>	=7.5%
Gross purchases during audit period		\$1,094,625.00	

10. Petitioner had net purchases for the audit period of \$884,508.00 determined as follows:

Total purchases	\$1,094,625.00
inventory on hand at	
beginning of audit period	<u>134,600.00</u>
Total inventory available	\$1,229,225.00
Total inventory available	\$1,229,225.00
inventory on hand at end	
of audit period	<u>(273,000.00)</u>
Adjusted purchases	\$ 956,225.00
Adjusted purchases	\$ 956,225.00
7.5% shrinkage	(71,717.00)
Net purchases	\$ 884,508.00

11. Items selling for less than \$250.00 accounted for 75% of petitioner's gross sales.

12. Items selling for less than \$250.00 had an average mark-up of 69.36%.

13. Items with a cost to petitioner of more than \$250.00 accounted for 25% of petitioner's gross sales.

14. Items with a cost to petitioner of more than \$250.00 had an average mark-up of 74.8%.

15. Gene Gordon and Milton Gordon were responsible officers of Cross-County Jewelers, Inc.

CONCLUSIONS OF LAW

A. That petitioner, Cross-County Jewelers, Inc., has failed to disprove the findings of the Sales Tax Bureau, as determined in compliance with the language and intent of section 1138(a) of the Tax Law, that the average mark-up on items with a cost to petitioner of \$250.00 or more was 74.8%.

B. That the computation of the mark-up done by the Sales Tax Bureau on items sold by the petitioner for less than \$250.00 was erroneous. Because it was based upon the selling price of the item, it failed to reflect the mark-up on items in the upper price range of the category, and therefore gave undue emphasis to the mark-up on items in the lower price range of the category. By utilizing a representative sample of all items in this category which were sold during the period covered by the audit, and by applying thereto the same computational methods used by the Sales Tax Bureau in computing the mark-up on items with a cost to the petitioner of \$250.00 or more, petitioner has established the average mark-up on items sold by petitioner for less than \$250.00 to be 69.36%

C. That petitioner has failed to disprove the findings of the Sales Tax Bureau, as determined in compliance with the language and intent of section 1138(a) of the Tax Law, that the sale of items for less than \$250.00 comprised 75% of petitioner's gross sales, and that the sale of items with a cost to the petitioner of \$250.00 or more comprised 25% of petitioner's gross sales.

D. That petitioner has failed to disprove the findings of the Sales Tax Bureau, as determined in compliance with the language and intent of section 1138(a) of the Tax Law, that inventory shrinkage did not exceed 7.5% of purchases.

E. That the petition of Cross-County Jewelers, Inc., is granted to the extent that the mark-up to be applied to items sold by petitioner for less than \$250.00 is reduced to 69.36%; 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 July 24, 1975; and, that, except as so granted, the petition is in all other respects denied.

DATED: ALBANY, NEW YORK
September 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



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

546

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THOMAS H. LYNCH

September 22, 1977

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Sincerely,

**John J. Sollecito
Director
Tax Appeals Bureau**

cc: Petitioner's Representative

Taxing Bureau's Representative

FORMAL HEADLINE

KALMON V. GALLOP, Esq.
1345 Avenue of the Americas
New York, New York 10019



RADIO CITY
STATION



STATE OF NEW YORK

In The Matter of the Petition :
of :
CROSS-COUNTY JEWELERS, INC. : DETERMINATION
and :
GENE GORDON AND MILTON GORDON :
INDIVIDUALLY AND AS OFFICERS :
for Revision of a Determination or for :
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
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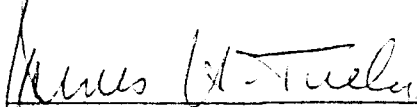
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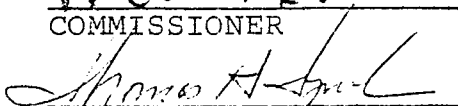
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DATED: ALBANY, NEW YORK
September 22, 1977

STATE TAX COMMISSION


PRESIDENT


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