

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MANNY CONVISSAR & NORMAN CONVISSAR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(s)~~ :
June 1, 1968 through August 31, 1971.

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 7th day of June , 1977, ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Manny Convissar &
Norman Convissar ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Manny Convissar & Norman Convissar
2120 Caton Avenue
Brooklyn, New York

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

7th day of June , 1977.

Bruce Batchelor

John 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

June 7, 1977

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

Manny Convissar & Norman Convissar
2120 Caton Avenue
Brooklyn, New York

Gentlemen:

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 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. Puccia

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: ~~Taxing Bureau's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MANNY CONVISSAR & NORMAN CONVISSAR	:	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 June 1, 1968 through	:	
August 31, 1971.	:	
	:	

Applicants, Manny Convissar and Norman Convissar, 2120 Caton Avenue, Brooklyn, New York, 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, 1968 through August 31, 1971 (File No. 00202).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on September 15, 1976, at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The applicants, Manny Convissar and Norman Convissar, appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Whether the audit of applicant's books and records for the period June 1, 1968 through August 31, 1971 was properly conducted.

FINDINGS OF FACT

1. Applicants, Manny Convissar and Norman Convissar, partners in a candy store-luncheonette, filed New York State sales and use tax returns for the period June 1, 1968 through August 31, 1971.

2. On March 20, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand against applicants imposing additional sales tax due for the period June 1, 1968 through August 31, 1971 in the sum of \$4,121.71 plus penalty and interest of \$2,175.07. The additional sales tax found to be due was based upon an audit of applicants' books and records.

3. The audit consisted of an analysis of purchases for the month of November, 1972. Categories of purchases which would be subject to sales tax when sold, were segregated and marked-up on the basis of the auditor's experience with mark-ups of similar businesses. As a result of the purchase analysis and mark-up, the Bureau found a taxable percentage of gross sales of 30.86% for the period prior to July 1, 1971, and 40.29% for the period commencing July 1, 1971.

4. Applicants, Manny Convissar and Norman Convissar, presented no cash register tapes, purchase invoices or other records that would facilitate an actual mark-up of purchases.

5. In computing the additional sales tax due, the sales tax auditor applied the taxable percentage of 30.86% to gross sales for the period prior to June 1, 1971 rather than to the period prior to July 1, 1971. This resulted in the overstatement of the taxable percentage for the month of June, 1971 to the extent of 9.43%.

6. Applicants sold a quantity of cigarettes purchased for \$3,200.00 during 1968 and 1969 to Alfred Convissar, who resold the cigarettes at his luncheonette.

CONCLUSIONS OF LAW

A. That applicants, Manny Convissar and Norman Convissar, failed to present records required to be kept under section 1135 of the Tax Law.

B. That the Sales Tax Bureau properly conducted the audit using the available information and external indicies, in accordance with section 1138(a) of the Tax Law.

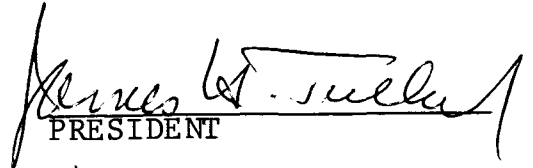
C. That the Sales Tax Bureau is directed to correct the 9.43% overstatement of the taxable percentage for the month of June, 1971 and to make allowance for the sale, for resale, of \$3,200.00 in cigarette purchases.

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D. That the application of Manny Convissar and Norman Convissar is denied and the Notice of Determination and Demand issued on March 20, 1974, modified as previously stated, is sustained.

DATED: Albany, New York
June 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

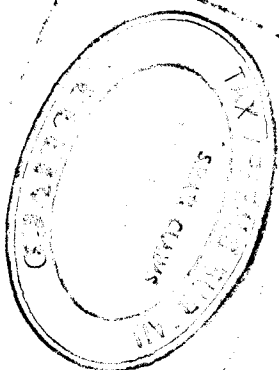
Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Manny Convissar & Norman Convissar
2120 Caton Avenue
Brooklyn, New York



6/13/73

Received Permitted
New York
J. H. Clark
10306

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MANNY CONVISSAR & NORMAN CONVISSAR :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
6/1/68 through 8/31/71.

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 30th day of June , 1977 , she served the within

Notice of Determination by ~~(certified)~~ mail upon Manny Convissar and
Norman Convissar

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

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210 Reno Avenue
Staten Island, NY 10306

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~~XXXX~~ 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

30th day of June , 1977

Marsina Donnini

Janet Mack