

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application of

Norman Meyer d/b/a Meyers Pharmacy (Ticonderoga)  
Norman Meyer d/b/a Meyers Pharmacy (Saranac Lake)  
Meyers Pharmacy (Lake Placid)  
N.H. Meyer Drug, Inc. (Plattsburgh)  
Meyers Liquor Store (Plattsburgh)  
Meyers Gift Shop (Plattsburgh)

For a Redetermination of a Deficiency or  
a Refund of Sales and Use Taxes under  
Articles 28 and 29 of the Tax Law for the  
Periods 8/1/65 - 2/28/69 and 6/1/69 - 3/31/72.

State of New York  
County of Albany

Thomas C. Paley, being duly sworn, deposes and says:

I am over the age of eighteen years and am not a party to this  
action. On the 22nd day of January, 1976, at 2:25 p.m.

at 90 State Street, Albany County, Albany, New York, I served upon  
Eugene Steiner, the attorney for the taxpayer, a copy of the annexed  
determination by delivering to Janice Mann, a copy of the  
determination at the offices of Eugene Steiner.

Julius E. Braun

JULIUS E. BRAUN  
NOTARY PUBLIC  
RENSSELAER COUNTY, N. Y. STAT.  
COMMISSION EXPIRES MARCH 30, 1977

Thomas C. Paley

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application of  
NORMAN MEYER d/b/a MEYERS PHARMACY (Ticonderoga)  
NORMAN MEYER d/b/a MEYERS PHARMACY (Saranac Lake)  
MEYERS PHARMACY (Lake Placid) :  
N.H. MEYER DRUG, INC. (Plattsburgh)  
MEYERS LIQUOR STORE (Plattsburgh) :  
MEYERS GIFT SHOP (Plattsburgh) :  
For a Redetermination of a Deficiency or  
a Refund of Sales and Use :  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~Year(s)~~ Periods 8/1/65 -  
2/28/69 and 6/1/69 - 3/31/72.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~CERTIFIED~~ MAIL

State of New York  
County of Albany

JANET MACK , 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 22nd day of January , 1976 , she served the within  
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon NORMAN MEYER d/b/a  
MEYERS PHARMACY  
(Ticonderoga)  
(~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Norman Meyer d/b/a  
Meyers Pharmacy  
133 Montcalm Street  
Ticonderoga, New York 12883  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~)  
~~of~~ 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 January , 1976.

May Goff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application of  
NORMAN MEYER d/b/a MEYERS PHARMACY (Ticonderoga)  
NORMAN MEYER d/b/a MEYERS PHARMACY (Saranac Lake)  
MEYERS PHARMACY (Lake Placid) :  
N.H. MEYER DRUG, INC. (Plattsburgh) :  
MEYERS LIQUOR STORE (Plattsburgh) :  
MEYERS GIFT SHOP (Plattsburgh) :  
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age, and that on the 22nd day of January , 1976 , she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon MEYERS PHARMACY  
(Saranac Lake)  
~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Norman Meyer d/b/a  
Meyers Pharmacy  
69 Main Street  
Saranac Lake, New York 12983  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~of~~ petitioner herein and that the address set forth on said wrapper is the last  
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Sworn to before me this

22nd day of January , 1976.

Mary G. Giff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application of  
NORMAN MEYER d/b/a MEYERS PHARMACY (Ticonderoga)  
NORMAN MEYER d/b/a MEYERS PHARMACY (Saranac Lake)  
MEYERS PHARMACY (Lake Placid) :  
N.H. MEYER DRUG, INC. (Plattsburgh)  
MEYERS LIQUOR STORE (Plattsburgh) :  
MEYERS GIFT SHOP (Plattsburgh) :  
For a Redetermination of a Deficiency or  
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age, and that on the 22nd day of January , 1976 , she served the within  
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon MEYERS GIFT SHOP  
(Plattsburgh)  
(~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Meyers Gift Shop  
72 Margaret Street  
Plattsburgh, 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
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Sworn to before me this

22nd day of January , 1976

Mary Grogg

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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NORMAN MEYER d/b/a MEYERS PHARMACY (Ticonderoga)  
NORMAN MEYER d/b/a MEYERS PHARMACY (Saranac Lake)  
MEYERS PHARMACY (Lake Placid) :  
N.H. MEYER DRUG, INC. (Plattsburgh)  
MEYERS LIQUOR STORE (Plattsburgh) :  
MEYERS GIFT SHOP (Plattsburgh) :  
For a Redetermination of a Deficiency or  
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Taxes under Article(s) 28 and 29 of the  
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County of Albany

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age, and that on the 22nd day of January , 1976 , she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon N.H. MEYER DRUG, INC.  
(Plattsburgh)  
~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: N.H. Meyer Drug, Inc.  
52 Margaret Street  
Plattsburgh, New York 12901  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
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Sworn to before me this

22nd day of January , 1976.

Mary Kroff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application of  
NORMAN MEYER d/b/a MEYERS PHARMACY (Ticonderoga)  
NORMAN MEYER d/b/a MEYERS PHARMACY (Saranac Lake)  
MEYERS PHARMACY (Lake Placid) :  
N.H. MEYER DRUG, INC. (Plattsburgh) :  
MEYERS LIQUOR STORE (Plattsburgh) :  
MEYERS GIFT SHOP (Plattsburgh) :  
For a Redetermination of a Deficiency or  
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Taxes under Article(s) 28 and 29 of the  
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age, and that on the 22nd day of January , 1976 , she served the within  
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon MEYERS LIQUOR STORE  
(Plattsburgh)  
(~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Meyers Liquor Store  
Plaza Shopping Center  
Plattsburgh, New York 12901  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
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Sworn to before me this

22nd day of January , 1976.

Mary Hoff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application of  
NORMAN MEYER d/b/a MEYERS PHARMACY (Ticonderoga)  
NORMAN MEYER d/b/a MEYERS PHARMACY (Saranac Lake)  
MEYERS PHARMACY (Lake Placid) :  
N.H. MEYER DRUG, INC. (Plattsburgh) :  
MEYERS LIQUOR STORE (Plattsburgh) :  
MEYERS GIFT SHOP (Plattsburgh) :  
For a Redetermination of a Deficiency or  
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Taxes under Article(s) 28 and 29 of the  
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State of New York  
County of Albany

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age, and that on the 22nd day of January , 1976 , she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon MEYERS PHARMACY  
(Lake Placid)  
~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Meyers Pharmacy  
Main Street  
Lake Placid, New York 12946  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
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Sworn to before me this

22nd day of January , 1976.

Mary Hoff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

**DATED:** Albany, New York  
**January 22, 1976**

Mr. Norman Meyer  
d/ba Meyers Pharmacy  
69 Main Street  
Saranac Lake, New York 12983

**Dear Mr. Meyer:**

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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

PAUL GREENBERG  
HEARING OFFICER  
ACTING DIRECTOR  
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative  
Law Bureau

TA-1.12 (12/75)





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER  
(518) 457-3850

**DATED:** Albany, New York  
January 22, 1976

Mr. Norman Meyer  
d/b/a Meyers Pharmacy  
133 Montcalm Street  
Ticonderoga, New York 12883

**Dear Mr. Meyer:**

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  
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reply.

Very truly yours,

**PAUL GREENBERG**  
~~XXXXXXXXXXXX~~  
**ACTING DIRECTOR**  
**TAX APPEALS BUREAU**

Enc.

cc: Petitioner's Representative  
Law Bureau



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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ALBANY, N.Y. 12227

AREA CODE 518

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HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

**DATED:** Albany, New York  
**January 22, 1976**

**Meyers Gift Shop  
72 Margaret Street  
Plattsburgh, 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 and 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
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These will be referred to the proper party for  
reply.

Very truly yours,

**PAUL GREENBERG**  
~~XXXXXXXXXXXXXXXXXXXX~~  
**ACTING DIRECTOR**  
**TAX APPEALS BUREAU**

Enc.

cc: Petitioner's Representative  
Law Bureau

TA-1.12 (12/75)



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 107  
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ALBANY, N.Y. 12227

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STATE TAX COMMISSION

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HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

**DATED:** Albany, New York  
**January 22, 1976**

**N.H. Meyer Drug, Inc.**  
**52 Margaret Street**  
**Plattsburgh, New York 12901**

**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  
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Very truly yours,

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**ACTING DIRECTOR**  
**TAX APPEALS BUREAU**

Enc.

cc: Petitioner's Representative  
Law Bureau

TA-1.12 (12/75)



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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STATE TAX COMMISSION

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HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

**DATED:** Albany, New York  
**January 22, 1976**

**Meyers Liquor Store  
Plaza Shopping Center  
Plattsburgh, New York 12901**

**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-  
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Very truly yours,

  
**PAUL GREENBERG**  
**ACTING DIRECTOR**  
**TAX APPEALS BUREAU**

Enc.

cc: Petitioner's Representative  
Law Bureau



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

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STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

**DATED:** Albany, New York  
**January 22, 1976**

**Meyers Pharmacy, Inc.**  
**Main Street**  
**Lake Placid, New York 12946**

**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  
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Very truly yours,

**PAUL GREENBERG**  
**XXXXXXXXXXXXXXXXXXXX**  
**ACTING DIRECTOR**  
**TAX APPEALS BUREAU**

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:
of	:
NORMAN MEYER d/b/a MEYERS PHARMACY (Ticonderoga)	:
NORMAN MEYER d/b/a MEYERS PHARMACY (Saranac Lake)	:
MEYERS PHARMACY (Lake Placid)	:
N.H. MEYER DRUG, INC. (Plattsburgh)	:
MEYERS LIQUOR STORE (Plattsburgh)	:
MEYERS GIFT SHOP (Plattsburgh)	:
	DETERMINATION
	:
for a Hearing to Review Determinations of	:
Sales or Use Taxes Due, or to Review a	:
Denial of a Refund of Sales or Use Taxes	:
Paid under Articles 28 and 29 of the Tax	:
Law for the Periods August 1, 1965 through	:
February 28, 1969 and June 1, 1969 through	:
March 31, 1972.	:

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Norman Meyer, d/b/a Meyers Pharmacy located in Ticonderoga, New York; Norman Meyer, d/b/a Meyers Pharmacy located in Saranac Lake, New York; Meyers Pharmacy located in Lake Placid, New York; N.H. Meyer Drug, Inc. located in Plattsburgh, New York; Meyers Liquor Store also located in Plattsburgh, New York and Meyers Gift Shop also located in Plattsburgh, New York, each applied for a hearing to review separate determinations against each for sales taxes due under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through February 28, 1969. The same applicants, with the exception of Meyers Gift Shop of Plattsburgh, New York,

(which had gone out of business in December, 1968) also applied for hearings to review separate determinations against each for sales taxes due for the period June 1, 1969 through March 31, 1972.

The determination for the first period was issued on November 26, 1969, as to the Ticonderoga, Saranac Lake and Lake Placid drug stores, on December 1, 1969, as to the Plattsburgh drug store and the gift store, and on December 8, 1969, as to the liquor store.

All determinations for the second period (beginning June 1, 1969) were issued on February 26, 1973. Said determinations for the second period were issued under consents authorizing a determination at any time through February 28, 1972. Each consent was signed by Norman H. Meyer, was dated by a typewritten "7/24/72" and was stamped received by the Department of Taxation and Finance on September 11, 1972.

The amounts involved in the determinations under review are as follows (in the order named in the caption, with the determinations for both periods set out):

	<u>Tax</u>	<u>Pen. &amp; Int.</u>	<u>Total</u>
Ticonderoga	\$ 2,704.39	\$ 727.96	\$ 3,342.18
	4,137.14	1,170.78	5,307.92
Saranac Lake	2,704.39	849.43	3,553.82
	3,959.20	1,120.22	5,079.42

	<u>Tax</u>	<u>Pen. &amp; Int.</u>	<u>Total</u>
Lake Placid	\$ 5,156.75	\$ 1,474.22	\$ 6,630.97
	5,565.60	1,644.78	7,210.38
Plattsburgh	14,609.67	4,744.10	19,353.77
	9,125.15	2,577.74	11,702.89
Liquor Store	641.19	164.62	805.81
	709.95	192.97	902.72
Gift Shop	508.08	190.94	697.02
	<u>\$49,831.34</u>	<u>\$14,857.56</u>	<u>\$64,676.90</u>

A hearing was duly held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, before Nigel G. Wright, Hearing Officer, on the following dates: June 29, 1973; July 24, 1973; July 31, 1973; August 8 and 9, 1973; August 15 and 16, 1973.

The applicants were represented by Eugene J. Steiner, Esq. of Steiner and Steiner, Albany, New York. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq.

The record of said hearing has been duly examined and considered.

#### ISSUES

The issues in the case are:

I. Whether the applicant's methods of recording taxable sales and sales tax collections are adequate.



II. Whether an estimate made by the State auditors of sales taxes due to the State is reasonable in view of applicant's allegations that he had a high profit margin on taxable items and a low margin on tax exempt items.

III. Whether the determination of sales taxes due which is under review requires any correction or modification in view of evidence provided by the applicant.

IV. The determinations against "Meyers Liquor Store" and against Meyers Gift Shop have not been contested and will be deemed to have been admitted.

#### FINDINGS OF FACT

1(a). Norman Meyer, with his wife, Mona H. Meyer, as a partner, operated drug stores in Ticonderoga, New York, and Saranac Lake, New York. Meyers Pharmacy, Inc., which is properly known as N.H. Meyer Pharmacy, Inc., and which is owned entirely by Norman Meyer, operates a drug store in Lake Placid, New York. N.H. Meyer Drug, Inc., which is owned entirely by Norman Meyer, operates a drug store in Plattsburgh, New York.

1(b). Meyers Liquor Store, which is a partnership of Norman Meyer and his wife, Mona H. Meyer, operates a liquor store in Plattsburgh, New York. Meyers Gift Shop, which was controlled by Norman Meyer, operated a gift shop in Plattsburgh, New York, until December, 1968 when it went out of business.

2(a). The four drug stores operated directly or indirectly by Norman Meyer were all similar in nature except for the Lake Placid store which did not have a pharmacist in attendance and which, therefore, did not sell prescription drugs.

2(b). The books and records for the four drug stores were consolidated and were kept at the Plattsburgh store. Separate records were not kept. Purchases were made for the four stores as a unit. No records were kept of transfers of inventory between stores.

2(c). The gift store and the liquor store kept separate records.

3(a). The Plattsburgh store was the biggest drug store. It was divided into four sections each with its own cash register; a drug section, a cosmetics and jewelry section, a cigarette section and a fountain section.

3(b). The Saranac Lake store was similarly divided into four sections each with its own register.

3(c). The Ticonderoga store had only two sections: Drugs and cigarettes.

3(d). The Lake Placid store had only two sections: drugs and cigarettes.

3(e). At none of the stores were the various sections segregated sufficiently to prevent sales from one section to be

rung up on a register located in another section. In fact each register, particularly the drug and cigarette registers, were used to record sales from other sections.

4. Applicant has testified, and it is found, that the profit on the sale of some prescription drugs was very high while the profit on some general merchandise, normally subject to tax, was non-existent or negative. He has also testified, however, and it is found, that he had to meet the prices of "discount" drug stores and that some of his "loss leaders" were items which would ordinarily be tax exempt.

5(a). Some sales were made by applicant to customers with resale certificates or tax exemption certificates. However, these customers purchased both items ordinarily taxable and items which are ordinarily exempt even without such certificates and no detailed information has been offered by applicant as to the amounts of the otherwise taxable items that these certificates covered.

5(b). Applicant admits that he sold cigarettes by the carton as "tax free" and that he chose to absorb the tax. His most usual price during the audit period was \$3.90 a carton of which \$1.50 constituted Federal excise tax. Necessarily no sales tax was recorded as collected by applicant either on his cash register tapes or in any other way. Applicant did, however, on some occasions enter an amount for sales taxes on cigarettes on his daily reports from

which his sales tax return was prepared; on some occasions he did not do this.

6(a). Sales tax returns were filed separately for each of the drug stores. These returns included figures purportedly showing both gross sales and taxable sales. These figures were based on applicant's books and records which were derived from "daily reports" from each of the stores. Said daily reports are designed to record the readings of cash register tapes, the amount of cash taken in and the amount of cash paid out. Computations reconciling these amounts were usually also shown. These were made up usually, not daily, but for three or four-day periods.

6(b). There is no dispute concerning the bookkeeping methods used by applicant to transfer the information as to sales taxes collected from the "daily reports" to the general books of account and from there to the sales tax returns. Said daily report, however, did not show a figure for the amount of taxable sales. The figure for taxable sales shown on the filed tax returns was computed by an algebraic equation from the figure for tax collections. This formula derives taxable sales from the tax collected by dividing the tax collected by the tax rate currently in effect. The dispute herein relates primarily to the accuracy of the information entered on the "daily reports" and in particular the information as to taxes collected and the amount of taxable sales.

6(c). The applicants' "daily reports" were made up by initially entering on the report the total figure on each cash register tape for each register in the particular store. The figure would include both the sales prices of items sold and any sales tax collected from the customer on such items. The report then showed a breakdown of that figure into figures for gross sales and the sales tax collections for each cash register.

6(d). The source for the figures used by applicant for sales tax collections (and indirectly for the amount of taxable sales) were variously: (1) the cash register tapes for certain of the drug section registers; (2) certain "memo pads" kept at the side of some of the registers and on which the sales clerk would tabulate the tax collections independently of the cash register; and (3) by calculation from the amount of gross sales using a rate which was less than the sales tax rate which was then in effect, e.g. 5% of gross sales when the statutory rate was 7%.

6(e). Applicant has shown that his own tax return in one instance was inconsistent with his daily reports in that the tax reported and paid over to the State was \$400.00 more than that shown to be due on the daily report. This was for the quarter ending February 28, 1971, for the Saranac Lake store. This inaccuracy is admitted by the Sales Tax Bureau. However, the accuracy of this daily report has in no way been verified.

7(a). The applicant's cash registers were of various types. Some of applicant's cash registers could record only individual prices and a total for the transaction. They had no sub-total key to enable the taxable and non-taxable items to be added separately. These registers could, of course, accumulate the sum of all items on the tape at the end of the day for a single total. On these machines no attempt was made to add sales tax in as a separate item. The operator merely recorded one figure including price and applicable tax for each item.

7(b). Other registers used by applicant had separate sub-total keys and taxable items could be kept separate from non-taxable items. However, they could accumulate only one total of all items on the tape at the end of the day.

7(c). Still other registers had sub-total keys and "tax total" keys. The tax total key would enable the machine to accumulate at the end of the day the taxes recorded as collected on each item sold during the day. These registers were generally in the drug section of each store.

8(a). The applicant's daily reports for the Plattsburgh store for the two-month period of July and August, 1967 and for the month of February, 1968 showed that the only sales taxes recorded to be paid to the State were those on the drug register. This amount was less than one percent of the amount of sales shown on such register.

In addition the daily reports showed cigarette sales amounting to about one-quarter of the stores total sales and on which no sales tax had been collected or recorded to be paid over to the State.

8(b). The applicant's daily reports for the Ticonderoga drug store for a two-month period of June 30 to August 31, 1967, and for a one-month period of February, 1968 showed that the only sales taxes recorded to be paid to the State were sales taxes on the drug register. This amount was less than 1% of the amount of sales. In addition the daily reports showed cigarette sales amounting to about one-quarter of the store's total sales and on which no sales tax had been collected or recorded to be paid over to the State.

8(c). Applicant's daily reports for its Lake Placid store were summarized for the entire period August, 1965 through August, 1968. These showed sales taxes recorded amounting to about one and one-half percent of the total sales for drugs, cigarettes and the fountain. A more detailed analysis was made for the months of November, 1966 and February, 1968. Those showed recorded sales taxes amounting to less than 1% on drugs and of just over 1% on cigarettes.

8(d). The applicant's daily reports for the Saranac Lake drug store for June, 1967 and for March, 1968 showed that sales taxes amounting to less than one-half of one percent were collected and

recorded on sales made through the drug register. Sales taxes amounting to less than 1% were recorded for cigarette sales for June, 1967 but none were recorded for March, 1968.

9(a). The determination under review for the first period, August 1, 1965 through February 28, 1969, increased the tax due from the drug stores by 75.46%. Since about 35% of gross sales had been reported as taxable sales on the sales tax returns, the increase in tax due by 75.46% is in effect a determination that correct taxable sales were about 61% of gross sales.

9(b). The ratio of 75.46%, or "margin of error", was determined by an audit for three test periods of the cash register tapes of the Plattsburgh drug store. No other drug store was included. The test periods were: May 18-20, 1966; October 10-12, 1966; and February 19-22, 1968. These cash register tapes were inspected visually by the tax examiners. Where a figure or group of figures on the tape was followed by another figure which could have been a sales tax then both such sales figures and such sales tax figures were noted. Totals were taken for both the sales and sales tax figures. Such figures were compared with the applicant's daily reports. It was found that for the drug register the taxes actually collected as recorded on the cash register tapes were higher than the tax collections reported on the daily reports. For the cosmetics register it was found that a tax computed on taxable sales at the



applicable rate was higher than the taxes shown on the daily report. The same was true for the fountain sales and was also true for cigarette sales for one period, October 10-12, 1966. For cigarette sales for two test periods the tax collected as shown on the daily reports was higher than any taxes shown on the cash register tapes. A total was taken of the largest figures for each of the registers, of taxes shown on the daily report, taxes shown on the cash register tape and a tax computed at the applicable rate on taxable sales as shown on the cash register tape. Such total results in the tax required by law to be paid to the State.

9(c). Submitted in evidence are the work papers for the tape audit listing the individual items of tax as they appeared on the tape. This is true of all three "daily report" periods for the drug register, for the first two such periods for the cosmetics register and for the first period only for the cigarette register. These account for all tax collections shown on the tapes as recorded by the tax examiner for the entire tape audit.

10(a). A second test audit was made for the first period both as a check on the first audit and as a basis to extend the results of the tape audit to all four drug stores. This was a purchase audit for the test period of December, 1966 through November, 1967 and it resulted in a finding that over 71% of gross sales were taxable sales.

10(b). This purchase audit was done as follows; the check register was examined and where deemed appropriate, invoices were also examined. The amounts were allocated to taxable or non-taxable sales at each drug store and to the fountain and the gift shop. A ratio was computed of taxable sales at the drug stores to the total of both taxable and non-taxable sales excluding the fountain and gift shop sales. For the period of December, 1966 through February, 1967, a breakdown allocation was made to each of the individual drug stores. For the other months of the one-year period no such breakdown was made.

11(a). The assessment for the second period under review resulted in increasing the taxable sales shown on the return by a margin of error of 31%. This margin of error had been computed from a test audit of the six-month period, March 1 through August 31, 1971, which showed that taxable sales amounted to 66% of the gross sales of \$400,987.98 reported on the return. This amounted to \$264,652.07, or \$62,678.07 more than the \$201,974.00 of taxable sales reported on the return. The audit had been done by considering the four drug stores together.

11(b). The purchase audit was conducted by listing the names of suppliers from the applicants' checkbooks, excluding checks issued for items other than merchandise, for the months of March through August, 1971. Where checks had been issued to large vendors

who might be furnishing both taxable and non-taxable items the sales invoices from that supplier were requested and, when furnished, were inspected. The auditor determined whether the goods furnished by the supplier would be taxable, tax exempt, or purchased for the snack bar. This was done at times after discussion with applicant or his staff. Totals were taken and it was computed that 34.3% of the purchases would be exempt on resale.

11(c). A revision of this audit was prepared in the fall of 1973 after the hearings in this case were concluded as a result of the applicant's ability to produce better records. This resulted in decreasing the ratio of taxable purchases to gross purchases to 64%.

11(d). In opposition to the State's audit applicant has given testimony of general ledger totals for items sold for resale. These, however, do not specify a breakdown between taxables and tax exempts. Furthermore, they are not related to either the figures in the State's purchase audit nor to any other information in evidence. In addition, applicant has submitted his own purchase audit for a test period including most of calendar year 1971. He has not, however, identified the specific purchases which he considers to be tax exempt. Furthermore, he does not identify precisely what time period is covered.

12(a). The applicant has offered in evidence the results of his own test audit of the cash register tapes at the Plattsburgh drug store. This test was for the period December 1, 1970 through November 30, 1971. Applicant alleges that his chief bookkeeper made a visual inspection of the tapes and recorded the amount of sales tax recorded on the tapes when such amounts were recognized by the bookkeeper as being a tax applicable to a preceding sale figure or group of sales figures. These amounts were totalled and the results compared to the taxes recorded on the daily reports. The amount shown to have been paid to the State was \$537.75 more than the \$9,931.09 shown to have been collected by the cash register tapes. The most detailed information in evidence, however, to support this test audit is a list of total sales tax allegedly collected by the tapes for each two or three-day period corresponding to the periods covered by each daily report.

12(b). The same type of test audit was performed for the other drug stores and with similar results. The most detailed information in evidence to support this test audit is a list of totals of sales taxes collected according to the tapes by sales tax quarters. No breakdown even for daily report periods is in evidence.

12(c). The applicant has not offered in evidence either the actual tapes on which he made his test nor even the worksheet, if any, used by the witness to record the items of sales tax alleged

to be shown on said tapes. Statements at the hearing to the effect that cardboard cartons of tapes could be tendered are not proper offers of proof.

12(d). Applicant extended his test audit of cash register tapes at Plattsburgh to the subsequent period of December 1, 1971 through May 31, 1972. It reaches the same results as his first test audit. He did the same for the Ticonderoga and Saranac Lake drug stores. The only detailed information offered in evidence to support them, however, was the totals of the tax collected according to the tapes by the daily report periods of two or three days each.

12(e). The applicant has offered no satisfactory explanation of how his test audit of cash register tapes could be so close in results to his daily reports, when the tape audit, by applicant's own admission, could not include any tax on cigarette sales while the daily reports included tax on such sales, generally at 5% of the register total. This not only implies the existence of an error in identifying tax collections on the cash register tapes at least equal to the amounts of taxes shown on the daily report to be due on cigarette sales but the coincidence of the final totals even with the error arouses suspicion as to the credibility of those who performed the applicant's audit.

13. While applicant has produced some "daily reports" which are apparently adequate all such reports are for a time period after the period under review and after the state's audit herein was commenced and cannot be taken as typical of earlier daily reports. They are accordingly rejected as probative evidence.

CONCLUSIONS OF LAW

A. The applicant's method of recording taxable sales and sales tax collections are not adequate. Even assuming that his cash register tapes are accurate, the applicant has admitted that he does not use those tapes in the computation of sales taxes due to the State. The memo pads are completely inadequate. The amount of sales tax entered on the pad is necessarily separated from the sales figure to which it relates. In this condition the figures cannot be easily matched and applicant has no adequate controls over the persons who prepare such pads (and in the absence of an assessment no reason to supervise their preparation) nor is there an adequate audit trail by which they can be verified. When these memo pads were checked against the register tapes available they were shown to be completely inadequate. The use of an arbitrary percentage, less than the statutory sales tax rate, of totals shown on cash register tapes is clearly not authorized by statute and in any event it is not clear from the record as to exactly when and on what registers such method was used.

B. The estimate which was made by the State auditor of sales taxes due to the State and which supports the determination under review is adequate as to method in view of the condition of applicant's books and records. The applicant has not produced records which are adequately segregated so that separate audits of drug items and of non-drug items could be made and he certainly has not produced such an audit himself.

C. Applicant has been given more than sufficient opportunity to show corrections and modifications to the State's audit. The mistake of \$400.00 in taxable sales on one tax return referred to in paragraph 6(e) is irrelevant since it is the accuracy of the figures for taxable sales which are in issue and which are the subject of the estimate and assessment under review. The only occasion when applicant has come forward with better figures on which a better estimate and assessment can be made is on the re-audit referred to in paragraph 11(c). The determination under review will be modified accordingly.

#### DETERMINATION

The determination under review for the first period is correct.

The determination under review for the second period is redetermined in accordance with paragraph 11(c) and paragraph "C" and together with the first determination constitutes the following:

	<u>Tax</u>	<u>Pen. &amp; Int.</u>	<u>Total</u>
Ticonderoga	\$ 2,704.39	\$ 727.96	\$ 3,432.18
	3,603.03	1,019.65	4,622.68
Saranac Lake	2,704.39	849.43	3,553.92
	3,448.06	975.60	4,423.66
Lake Placid	5,156.75	1,474.22	6,630.97
	4,847.08	1,432.43	6,279.51
Plattsburgh	14,609.67	4,744.10	19,353.77
	7,947.09	2,244.95	10,192.04
Liquor Store	641.19	164.62	805.81
	709.95	192.97	902.72
	<u>\$46,879.68</u>	<u>\$14,016.87</u>	<u>\$60,896.55</u>

Said sums are due together with such further interest as shall be computed under section 1145 of the Tax Law.

DATED: Albany, New York  
January 22, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER