

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARIA MELCON d/b/a  
CHANGO SUPER MARKET (Purchaser)

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

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ <sup>XXXXXX</sup> Period April 1,  
1969 through November 30, 1970.

State of New York  
County of Albany

Donna Scranton, 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 11th day of June, 1976, she served the within  
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Maria Melcon d/b/a  
Chango Super Market (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Maria Melcon  
d/b/a Chango Super Market  
67-20 48th Avenue  
Woodside, 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~~  
~~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

11th day of June, 1976.

Janet Mack

Donna Scranton

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MARIA MELCON d/b/a  
CHANGO SUPER MARKET (Purchaser)

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Tax Law for the ~~Year(s)~~ Period April 1;  
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State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 11th day of June, 1976, she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Emil

Sanchez, Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Emil Sanchez, Esq.  
11 Park Place  
New York, New York 10007

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) 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

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Donna Scranton

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

DATED: Albany, N.Y.  
June 11, 1976

TELEPHONE: (518) 457-3850

Maria Melcon  
d/b/a Chango Super Market  
67-20 48th Avenue  
Woodside, New York

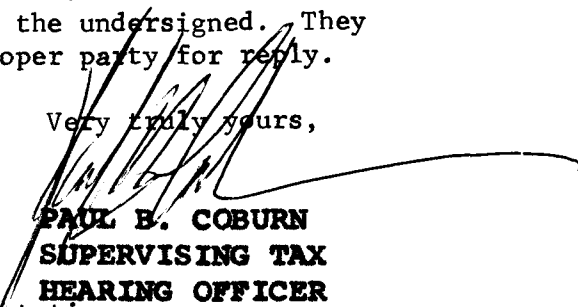
Dear Mrs. Melcon:

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,

  
PAUL B. COBURN  
SUPERVISING TAX  
HEARING OFFICER

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 :  
MARIA MELCON d/b/a :  
CHANGO SUPER MARKET (Purchaser) : DETERMINATION  
for Revision of a Determination or for :  
Refund of Sales and Use Taxes for the :  
Periods April 1, 1969 through November 30, :  
1970. :

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Applicant, Maria Melcon d/b/a Chango Super Market, 67-20  
48th Avenue, Woodside, New York, has filed an application for revision  
of a determination or for a refund of sales and use taxes under  
Articles 28 and 29 of the Tax Law for the periods April 1, 1969  
through November 30, 1970.

A formal hearing was held before Paul B. Coburn, Hearing  
Officer, at the offices of the State Tax Commission, Two World  
Trade Center, New York, New York, on October 22, 1974, at 1:15 P.M.  
and was continued on December 16, 1974, at 1:30 P.M. Applicant  
appeared by Emil Sanchez, Esq. The Income Tax Bureau appeared by  
Saul Heckelman, Esq., (Solomon Sies, Esq. of counsel).

ISSUE

Was the computation of additional sales tax due from Jose  
Formoso d/b/a Chango Super Market made on the basis of estimated

purchases for the periods April 1, 1969 through November 30, 1970, pursuant to section 1138(a) of the Tax Law a fair and reasonable assessment of sales tax liability?

FINDINGS OF FACT

1. On December 3, 1970, applicant, Maria Melcon, entered into a contract for the purchases in bulk of all the business assets of Chango Super Market located at 525 Amsterdam Avenue, New York, New York, from Jose Formoso. She continued the business in the same name.

2. On December 23, 1970, the Sales Tax Bureau issued a notice of claim to purchaser (Bulk Sales No. BSQ39478) to applicant, Maria Melcon.

3. On August 4, 1971, a bulk sale audit report was issued by the Sales Tax Bureau assessing the sales tax due and owing from Jose Formoso d/b/a Chango Super Market for the period April 1, 1969 through November 30, 1970. The findings of the report indicated that an additional sales tax of \$6,781.00 plus penalties and interest of \$815.27 for a total of \$7,596.27 was due and owing over and above the sales tax previously reported and paid by Mr. Formoso. This assessment was computed in the following fashion. The only records available to the tax examiner were a general ledger and purchase invoices held at the offices of Azan Brothers & Co., Mr. Formoso's

accounting firm. It was discovered that Mr. Formoso had been in business for the months of April and May, 1969. Recorded purchases amounted to \$17,117.70. A credit for beginning inventory of \$2,000.00 was applied, creating a net purchase figure of \$15,117.00. A markup of 25% was applied to the net purchase figure creating an estimated sales figure of \$18,897.12 for April and May, 1969. An analysis of purchases made for the months of August and November, 1969, was made to determine the sales tax for the period reported by Mr. Formoso. A markup of 25% was then applied to these purchases resulting in total sales for August and November of \$31,188.15. This amount was reduced by the gross sales reported per books for the same months. The difference was then compared to gross sales per books resulting in a percentage of error of unreported sales of 256.44%. Gross sales reported and unreported were combined yielding a gross sales figure of \$280,357.04.

It was determined that 43.03% of the gross sales of November and August, 1969, were subject to sales tax. This percentage was applied to the total estimated gross sales for the tax period in question resulting in a taxable sales amount of \$120,637.63. This figure was reduced by taxable sales reported resulting in additional taxable sales of \$113,017.63 from which additional tax plus penalties and interest were assessed.

4. On February 22, 1971, a Notice of Determination and demand for payment of sales and use taxes due (Notice No. 90303658) was issued by the Sales Tax Bureau to Jose Formoso d/b/a Chango Super Market as seller and to applicant, Maria Melcon, as purchaser, demanding the payment of additional tax, penalties and interest amounting to \$7,596.27.

CONCLUSIONS OF LAW

A. That the computation of additional sales tax due from Jose Formoso d/b/a Chango Super Market for the period April 1, 1969 through November 30, 1970, based on estimated taxable sales for the period was fair and reasonable. Where inadequate recordation exists to indicate the actual nature and extent of taxable business transactions, the tax may be computed on the basis of external indices such as purchases. The sample testing period was of ample length to render a reasonably accurate estimate of gross sales for the entire period. The 25% markup of recorded purchases was a fair and reasonable method of estimating gross sales from purchases. The determination of a percentage figure for unreported sales to reported sales and the computation of taxable sales were similarly done by fair methods. Where a taxpayer has failed to keep adequate records, the Sales Tax Bureau may employ methods reasonably calculated to reflect the taxes including the use of sampler methods. A test check of taxpayer's transactions will be held valid if it is fairly

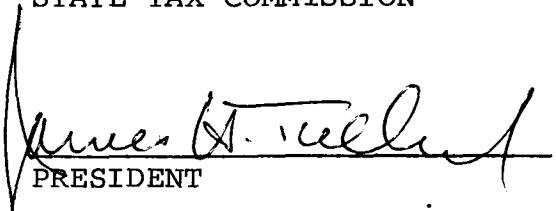
and reasonably calculated to approximate the taxpayer's actual liability. Absolute precision in this respect is not necessary.

B. That applicant, Maria Melcon d/b/a Chango Super Market, as a bulk sale purchaser is liable for unpaid sales tax due from Jose Formoso d/b/a Chango Super Market, the bulk sale seller, for the period from April 1, 1969 through November 30, 1970, in accordance with the meaning and intent of section 1141(c) of the Tax Law.

C. That the application of Maria Melcon d/b/a Chango Super Market is in all respects denied.

DATED: Albany, New York  
June 11, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER