

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HELMAR PHARMACY, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period ~~(s)~~
June 1, 1974 through March 19, 1976.

State of New York
County of Albany

John Huhn, 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 13th day of December, 1978, ~~she~~ served the within
Notice of Determination by ~~(represented)~~ mail upon Helmar Pharmacy, Inc.

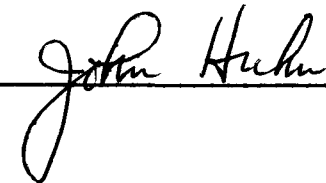
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Helmar Pharmacy, Inc.
c/o Emanuel Kuflik, CPA
75 Maiden Lane
New York, New York 10038
and by depositing same enclosed in a postpaid properly addressed 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)~~
~~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

13th day of December, 1978





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HELMAR PHARMACY, INC.

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of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period ~~(x)~~
June 1, 1974 through March 19, 1976.

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 13th day of December, 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon Emanuel Kuflik

(representative of) the petitioner in the within proceeding,

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


as follows: Emanuel Kuflik, CPA
75 Maiden Lane
New York, New York 10038

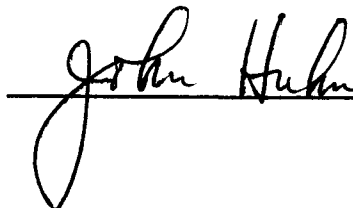
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of December, 1978.







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

December 13, 1978

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

**Helmar Pharmacy, Inc.
c/o Emanuel Kuflik, CPA
75 Maiden Lane
New York, New York 10038**


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,


**Joseph Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
HELMAR PHARMACY, INC. : 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, 1974 through March 19, :
1976. :

Applicant, Helmar Pharmacy, Inc., c/o Emanuel Kuflik, CPA,
75 Maiden Lane, New York, New York 10038, 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, 1974 through March 19, 1976 (File No. 17297).

3 A small claims hearing was held before Raymond Siegel,
Hearing Officer, at the offices of the State Tax Commission, Two
World Trade Center, New York, New York, on November 18, 1977 at
9:15 A.M. Applicant appeared by Emanuel Kuflik, CPA. The Sales
Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq.,
of counsel).

ISSUE

Whether applicant was properly assessed for sales and use
taxes due for the period June 1, 1974 through March 19, 1976,
within the meaning and intent of section 1138(a) of the Tax Law.

FINDINGS OF FACT

1. Applicant, Helmar Pharmacy, Inc., filed New York state and local sales and use tax returns for the period June 1, 1974 through March 19, 1976.

2. Applicant operated a retail pharmacy at 3209 Horse Block Road, Medford, New York, until March 19, 1976, when said business was sold to Medmar Pharmacy, Inc.

3. On September 7, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$5,874.75, plus penalty and interest, for the period June 1, 1974 through March 19, 1976.

4. The above Notice was based on the finding of a prior field audit conducted by an auditor from the Sales Tax Bureau which covered the period December 1, 1969 through May 31, 1974. The auditor determined a margin of error of 100.76% of reported taxable sales for said period. The Sales Tax Bureau applied the margin of error to the taxable sales reported by applicant for the period June 1, 1974 through February 29, 1976. This amount, plus estimated taxable sales of \$3,000.00 for the period March 1, 1976 through March 19, 1976, resulted in additional taxable sales of \$83,925.00. It is the additional sales taxes due which are at issue here.

5. Applicant contended that no audit was conducted for the period at issue and that the use of a prior audit makes the determination improper, in accordance with the meaning and intent of section 1138(a) of the Tax Law.

6. The Sales Tax Bureau contended that the audit made for the prior period was virtually uncontested and, therefore, it was correct in rejecting the sales tax returns filed for the period at issue.

CONCLUSIONS OF LAW

A. That applicant was not afforded an opportunity to present its books and records for audit, before the Sales Tax Bureau issued an assessment on September 7, 1976 for the period June 1, 1974 through March 19, 1976, which assessment was based on merely extending the findings of a prior field audit, without inquiry into whether applicant's method of doing business had undergone any changes.

B. That applicant, Helmar Pharmacy, Inc., was improperly assessed for sales and use taxes due for the period June 1, 1974 through March 19, 1976, according to the meaning and intent of section 1138(a) of the Tax Law.

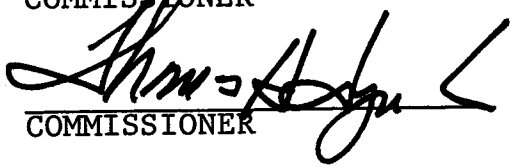
C. That the application of Helmar Pharmacy, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 7, 1976 is cancelled.

DATED: Albany, New York
December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER