

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
WILLIAM H. LEE  
Individually and as an Officer of  
GREENWICH VILLAGE PHARMACY, INC.  
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 ~~Year(s) or~~ Period ~~(s)~~  
August 1, 1965 to May 31, 1966.

AFFIDAVIT OF MAILING


State of New York  
County of Albany

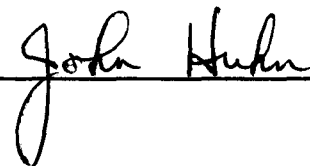
John Huhn, being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 3rd day of May, 1978, ~~he~~ served the within  
Notice of Determination by ~~(represented)~~ mail upon William H. Lee  
Individually & as an  
Officer of Greenwich Village 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:  
William H. Lee  
Individually & as an Officer of  
Greenwich Village Pharmacy, Inc.  
40 East 9th Street  
New York, New York 10003  
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)~~  
~~XXXXX~~ 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

3rd day of May, 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
WILLIAM H. LEE  
Individually and as an Officer of  
GREENWICH VILLAGE PHARMACY, INC.  
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, 1965 to May 31, 1966.

AFFIDAVIT OF MAILING

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 3rd day of May, 1978, ~~she~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Irving Schneider, Esq.

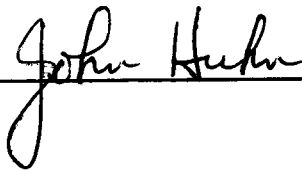
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Irving Schneider, Esq.  
30 Vesey Street  
New York, New York 10007

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 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

3rd day of May, 1978





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

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

May 3, 1978

**William H. Lee**  
**Individually & as an Officer of**  
**Greenwich Village Pharmacy, Inc.**  
**40 East 9th Street**  
**New York, New York 10003**

**Dear Mr. Lee:**

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,

  
**Aloysius J. Mendez**  
**Assistant Director**

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	:	
WILLIAM H. LEE	:	DETERMINATION
Individually and as an Officer of	:	
GREENWICH VILLAGE PHARMACY, INC.	:	
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 August 1,	:	
1965 to May 31, 1966.	:	

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Petitioner, William H. Lee, individually and as an officer of Greenwich Village Pharmacy, Inc., 40 East 9th Street, New York, New York 10003, filed a petition 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 August 1, 1965 to May 31, 1966 (File No. 16767).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 21, 1977 at 1:15 P.M. Petitioner appeared by Irving Schneider, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

#### ISSUE

Whether additional sales tax was due from petitioner individually and as an officer of Greenwich Village Pharmacy, Inc. for the period August 1, 1965 to May 31, 1966.

FINDINGS OF FACT

1. On October 10, 1966, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Greenwich Village Pharmacy, Inc. for the period August 1, 1965 to May 31, 1966 in the amount of \$2,415.00, plus penalty and interest of \$171.44, for a total due of \$2,586.44. Payments of \$439.55 reduced the amount due to \$2,146.89.

2. On February 5, 1969, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, William H. Lee, individually and as an officer of Greenwich Village Pharmacy, Inc., for the periods ending August 31, 1965 through May 31, 1966 in the amount of \$2,415.00, plus penalty and interest of \$944.90, for a total due of \$3,359.90. Payments of \$439.55 reduced the amount due to \$2,920.35.

3. Petitioner, William H. Lee, was a pharmacist who operated a drug store at 123 MacDougal Street, New York, New York, until a fire destroyed it in July of 1966. In September of 1966, he submitted his final sales tax returns for the following periods and made payments thereof.

<u>PERIOD</u>	<u>GROSS SALES</u>	<u>TAX SALES</u>	<u>TAX PAID WITH PENALTY &amp; INTEREST</u>
August 1, 1965 to August 31, 1965	\$ 3,600.00	\$1,400.00	\$ 80.50
September 1, 1965 to November 30, 1965	11,500.00	3,200.00	179.20
December 1, 1965 to February 28, 1966	11,700.00	3,300.00	179.85
June 1, 1966 to July 18, 1966	6,000.00	1,800.00	<u>90.00</u>
Total payments submitted as per checks #4, #5, #6 and #7 -			\$529.55

No copy of the return for March 1, 1966 to May 31, 1966 was available. The sales tax period of June 1, 1966 to July 18, 1966 is not in issue.

4. Petitioner, William H. Lee, kept a day-book ledger, in which he entered the total sales from his cash register tapes. It was from this ledger that his accountant submitted his sales tax returns and other state and federal returns. He had disposed of this day book and it was not available. All other records were destroyed in the fire. He estimated that as a one-man operation, the gross sales for a six-day week were \$1,000.00, and that 50% of these sales were exempt drug items, the balance being taxable sundries and tobacco.

CONCLUSIONS OF LAW

A. That pursuant to section 1138(a) of the Tax Law, where a sales tax return is not filed or when it is filed, is incorrect or insufficient, the amount of tax due shall be determined by the Tax Commission from such information as may be available. Therefore, as per Finding of Fact "4", supra, for the 43 weeks of the period August 1, 1965 to May 31, 1966, applicant's gross sales at \$1,000.00 per week would total \$43,000.00 in taxable sales, which at 50% would be \$21,500.00, with a sales tax of 5.25% or \$1,128.75. Since \$439.55 was paid, sales tax due is computed to be \$689.20.

B. That the petition of William H. Lee is granted to the extent indicated in Conclusion of Law "A", supra, together with such penalty and interest as may be legally due; 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 February 5, 1969 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
May 3, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER