

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MIDWAY SUPERMARKET, 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 & 29 of the :  
Tax Law for the ~~Period(s)~~ Period (x) :  
September 1, 1971 through November 30, 1974.

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 31st day of March, 1978, he served the within  
Notice of Determination by ~~(certified)~~ mail upon Midway Supermarket, Inc.

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Midway Supermarket, Inc.  
2518 8th Avenue  
New York, New York 10030

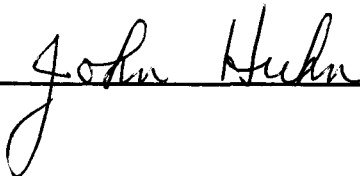
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

31st day of March, 1978.





1. ~~CONFIDENTIAL~~

2. ~~CONFIDENTIAL~~

3. ~~CONFIDENTIAL~~

4. ~~CONFIDENTIAL~~

5. ~~CONFIDENTIAL~~

6. ~~CONFIDENTIAL~~

7. ~~CONFIDENTIAL~~

8. ~~CONFIDENTIAL~~

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10. ~~CONFIDENTIAL~~

11. ~~CONFIDENTIAL~~

12. ~~CONFIDENTIAL~~

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14. ~~CONFIDENTIAL~~

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17. ~~CONFIDENTIAL~~

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19. ~~CONFIDENTIAL~~

20. ~~CONFIDENTIAL~~

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MIDWAY SUPERMARKET, INC.

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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)~~ Period(s) :  
September 1, 1971 through November 30, 1974.

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 31st day of March , 1978, ~~she~~ served the within  
Notice of Determination by (~~registered~~) mail upon Spencer L. Barback

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Spencer L. Barback, CPA  
5 Sadore Lane  
Yonkers, New York 10710

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

31st day of March , 1978

*Walker*

*John Huhn*



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

**March 31, 1978**

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

**Midway Supermarket, Inc.**  
**3518 8th Avenue**  
**New York, New York 10030**

**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) **1130 & 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 C. Garry**  
**Hearing Examiner**

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 :  
MIDWAY SUPERMARKET, 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 September 1, 1971 through :  
November 30, 1974. :

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Applicant, Midway Supermarket, Inc., 2518 8th Avenue, New York, New York 10030, 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 September 1, 1971 through November 30, 1974 (File No. 10437).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1977 at 9:15 A.M. Applicant appeared by Spencer Barback, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether the audit of applicant's books and records and the resultant findings were proper and correct.

#### FINDINGS OF FACT

1. Applicant, Midway Supermarket, Inc., filed New York State sales and use tax returns for the period September 1, 1971 through November 30, 1974.

2. After a field audit conducted by the Sales Tax Bureau, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on October 3, 1975 against applicant in the amount of \$14,954.91, plus penalty and interest.

3. On audit, merchandise purchase invoices for October of 1974 were examined by the Sales Tax Bureau. They were the only sufficient records available, since applicant was required by the New York City Fire Department to destroy prior records. As a result of the Bureau's examination of applicant's records for said month, it was found that 33% of Midway Supermarket, Inc.'s purchases were items that would be taxable when resold. This percentage was applied to applicant's recorded gross sales for the entire audit period, resulting in audited taxable sales of \$389,342.00. Midway Supermarket, Inc. reported in its sales tax returns taxable sales of \$183,651.00. The difference between the audited taxable sales and the reported sales is additional taxable sales in the sum of \$205,691.00 upon which sales tax is alleged due. The Sales Tax Bureau also assessed an additional \$287.00 in tax on fixed asset purchase. This assessment is not at issue here.

4. Applicant contended that the audit was inaccurate and claimed that one month's purchases would not sufficiently reflect Midway Supermarket, Inc.'s taxable sales. Consequently, it submitted work papers of an audit conducted by its accountant which revealed taxable sales of 28%. The audit was based on the months of March, April and July of 1975 and was conducted in accordance with audit procedures used by the Sales Tax Bureau.

Applicant argued that although this audit was not conducted during the period in question, purchases during the months examined were not very different from the one month used by the Sales Tax Bureau.

5. Applicant also alleged that the firm's bookkeeping during the period in question was performed by another accountant who died prior to the hearing. As a result, applicant contended that total reliance on its accountant should excuse the corporation from any further sales tax liability.

CONCLUSIONS OF LAW

A. That the audit by the Sales Tax Bureau based on an examination of applicant's records for a one-month period did not adequately reflect the applicant's actual business and sales. That the taxable sales percentage is 30% and is based on a combination of the audits performed by the Sales Tax Bureau and by applicant's accountant.

B. That the applicant acted in good faith and, therefore, all penalties and interest in excess of the minimum statutory rate are cancelled.

C. That the application of Midway Supermarket, Inc. is granted to the extent indicated in Conclusions of Law "A" and "B"; 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 on October 3, 1975, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York  
March 31, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



**SMALL CLAIMS**

**STATE OF NEW YORK**  
**Department of Taxation and Finance**  
**TAX APPEALS BUREAU**

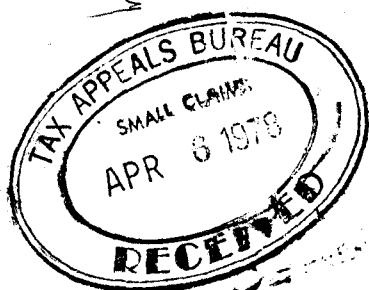
STATE CAMPUS  
 ALBANY, N. Y. 12227



- ☐ Moved, left no address
- ☐ No such number
- ☒ Moved, not forwardable
- ☐ Addressee unknown
- ☐ Refused

Spencer L. Farback, CPA  
 5 Sadore Lane  
 Yonkers, New York 10710

*No letter  
address  
NY County*





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

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MILTON KOERNER  
THOMAS H. LYNCH

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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 Chyrywaty**  
**Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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