

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

BOCE MILEV, ALEXANDER MILEV and  
DIMITAR MILEV d/b/a STUDENTS  
CHOICE FOODS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~  
Period Ending May 31, 1972 and for the  
Period September 1, 1972 through April 2, 1975.

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 20th day of September, 1978, he served the within

Notice of Determination

by ~~(representative of)~~ mail upon

Boce Milev, Alexander Milev &  
Dimitar Milev d/b/a Students  
Choice Foods

~~(representative of)~~ the petitioner in the within proceeding,

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


Boce Milev, Alexander Milev & Dimitar Milev  
as follows: d/b/a Students Choice Foods  
1347 Oak Street  
Syracuse, New York 13203

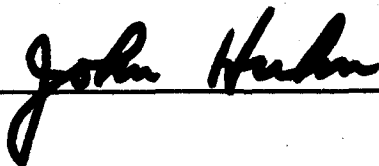
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~XXXXXX~~ 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

20th day of September, 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

**September 20, 1978**

**Boco Milev, Alexander Milev & Dimitar Milev  
d/b/a Students Choice Foods  
1347 Oak Street  
Syracuse, New York 13203**

**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 CHYNOWETH  
HEARING EXAMINER**

cc: ~~RECEIVED BY REPRESENTATIVE~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|  |   |               |
|--|---|---------------|
| In the Matter of the Application       | : |               |
| of                                     | : |               |
| BOCE MILEV, ALEXANDER MILEV and        | : | DETERMINATION |
| DIMITAR MILEV d/b/a STUDENTS           | : |               |
| CHOICE FOODS                           | : |               |
| 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 Ending May 31, 1972 and for | : |               |
| the Period September 1, 1972 through   | : |               |
| April 2, 1975.                         | : |               |

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Applicants, Boce Milev, Alexander Milev and Dimitar Milev d/b/a Students Choice Foods, 1347 Oak Street, Syracuse, New York 13203, 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 ending May 31, 1972 and for the period September 1, 1972 through April 2, 1975 (File No. 11652).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on July 27, 1977 at 9:15 A.M. Applicants appeared by Susan Milev, partner. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether applicants are liable for additional sales tax found to be due as the result of an audit performed by the Sales Tax Bureau.

FINDINGS OF FACT

1. Applicants owned and operated a grocery store in Syracuse, New York.
2. On September 30, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, imposing

additional sales tax in the amount of \$4,749.38, plus penalty and interest of \$1,512.39, for a total of \$6,261.77, for the period September 1, 1972 through April 2, 1975. The Notice was issued as the result of a review by the Sales Tax Bureau of applicant's sales tax returns, whereby 40 percent of applicant's gross sales were held to be taxable.

3. On November 12, 1975, applicant Dimitar Milev filed an Application for Hearing to Review Determination under Articles 28 and 29 of the Tax Law. In this application, applicant protested the Sales Tax Bureau's finding that 40 percent of the gross sales were taxable.

4. Upon receipt of the Application for Hearing, the Sales Tax Bureau conducted an audit of applicant's books and records. After checking applicant's purchase invoices for the period December of 1973 through February of 1974, the Sales Tax Bureau found \$11,179.00 of taxable purchases for said period. This figure was then compared to \$4,609.00 of taxable sales reported by applicant for the same period. Based on this discrepancy, the Sales Tax Bureau determined that the amount of sales due on the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 30, 1975 was lower than the amount that would be found due from a markup of applicant's taxable sales. The Sales Tax Bureau stated that spot checks of other months revealed similar discrepancies as well. Rather than revising the September 30, 1975 Notice to reflect a greater tax due, the Sales Tax Bureau held that said Notice was substantially correct and accurate, based upon its examination of applicant's books and records.

5. On February 20, 1976, an additional Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued by the Sales Tax Bureau. It was based on a further audit of applicant's records in the amount of \$756.00, which consisted of \$168.00 in sales taxes due for the period ended May 31, 1972 and \$588.00 in tax due from a bulk sale which occurred on May 8, 1972.

6. Applicant contended that the period examined during the audit was insufficient to produce accurate results and claimed that the amount allegedly due was incorrect because it failed to take into account theft and pilferage. No evidence was presented by applicant to show what percentage of its taxable purchase was subject to theft.

7. Applicant failed to submit any documentary evidence to dispute or show that the computations found by the Sales Tax Bureau were, in fact, inaccurate.

CONCLUSIONS OF LAW

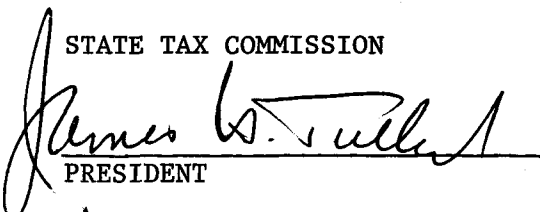
A. That based upon the information provided by applicant to the Sales Tax Bureau, the audit was properly conducted in accordance with section 1138(a) of the Tax Law and that the resultant findings were correct.

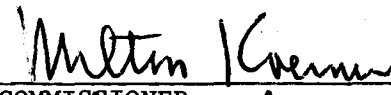
B. That the application of Boce Milev, Alexander Milev and Dimitar Milev d/b/a Students Choice Foods, is denied and the notices of determination and demand for payment of sales and use taxes due issued on September 30, 1975 and February 20, 1976, respectively, are sustained.

DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER