

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM SAKRAN d/b/a

SAKRAN'S MARKET

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)~~  
September 1, 1971 through May 31, 1974.

AFFIDAVIT OF MAILING


State of New York  
County of Albany

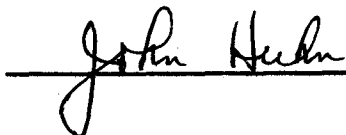
John Huhn, being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of August, 1978, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon William Sakran d/b/a  
Sakran's Market ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. William Sakran  
d/b/a Sakran's Market  
706 Oswego Street  
Syracuse, New York 13204  
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)~~  
~~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

25th day of August, 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
WILLIAM SAKRAN d/b/a  
SAKRAN'S MARKET

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 ~~Year(s)~~ Period(s) :  
September 1, 1971 through May 31, 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 25th day of August , 1978 , he served the within  
Notice of Determination by (~~certified~~) mail upon Mario A. Venditti

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Mario A. Venditti  
4912 West Genesee Street  
Camillus, New York 13031

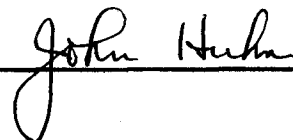
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

25th day of August , 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

**August 25, 1978**

**Mr. William Sakran  
d/b/a Sakran's Market  
706 Oswego Street  
Syracuse, New York 13204**

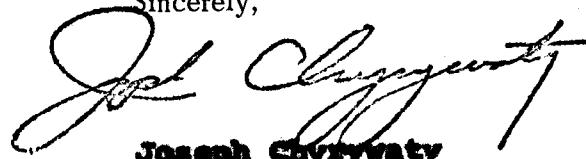
**Dear Mr. Sakran:**

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

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In the Matter of the Application :  
of :  
WILLIAM SAKRAN d/b/a : DETERMINATION  
SAKRAN'S MARKET :  
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 :  
May 31, 1974. :

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Applicant, William Sakran d/b/a Sakran's Market, 706 Oswego Street, Syracuse, New York 13204, 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 May 31, 1974 (File No. 11121).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on July 28, 1977 at 9:15 A.M. Applicant appeared by Mario A. Venditti. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether the determination of additional sales tax found due, based on a Sales Tax Bureau audit, was correct for the period September 1, 1971 through May 31, 1974.

FINDINGS OF FACT

1. Applicant, William Sakran d/b/a Sakran's Market, filed New York State sales and use tax returns for the period September 1, 1971 through May 31, 1974.

2. Applicant operated a large neighborhood grocery store specializing in fresh cut meats. Applicant also sold a variety of non-taxable groceries and produce, as well as many taxable items such as beer, soft drinks, soaps, paper products, etc.

3. On December 9, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, imposing additional sales tax due for the period September 1, 1971 through May 31, 1974 in the sum of \$11,116.70, plus penalty and interest. The additional sales tax found to be due was based on an audit of applicant's books and records.

4. The audit consisted of an analysis of purchase invoices for the period March 1, 1973 through May 31, 1973. These invoices were checked to determine taxable and non-taxable purchases and it was found that 29.7% of all purchases were taxable. These taxable purchases were broken down into various categories wherein the appropriate markup was determined for each category. The markups were then applied to purchases to obtain the total taxable sales for the test period. This total was compared to the reported taxable sales for the quarter to determine the percentage of omission. The percentage of omission was then applied to taxable sales reported for the period in question.

5. An examination of available cash register tapes showed that incorrect sales tax was charged and that many taxable sales figures did not show any sales tax charged. During the period in issue, the taxable sales reported by applicant were estimated. Applicant did not maintain a record of sales tax collected.

6. Applicant contended that the audit procedure conducted by the Sales Tax Bureau was inaccurate and arbitrary. Accordingly, applicant introduced into evidence his own audit conducted for the same three-month test period which revealed 22.19% of the purchases to be taxable purchases. Applicant then computed taxable sales by applying the above percentage to net sales. Net sales were computed by taking gross sales and subtracting therefrom sales to exempt organizations, sales tax paid and the cost price of bags, wrapping paper and cartons. Applicant's method produced an additional tax liability of \$4,602.20. At the hearing, applicant conceded that the cost of Bags, wrapping paper and cartons should not have been deducted from gross sales.

7. In computing taxable purchases of 22.19%, applicant excluded certain candies which were allegedly sold at ten cents or less.

8. Applicant offered no documentary proof to indicate what percentage of sales to exempt organizations consisted of items not subject to tax.

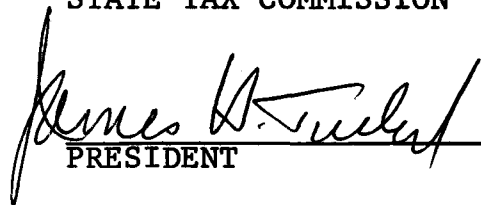
CONCLUSIONS OF LAW

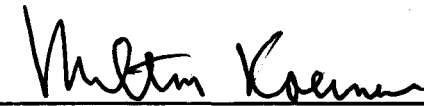
A. That the Sales Tax Bureau's examination of applicant's books and records and the resultant tax liability is determined to be proper and correct, in accordance with the meaning and intent of section 1138(a) of the Tax Law.

B. That the application of William Sakran d/b/a Sakran's Market is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 9, 1974 is sustained.

DATED: Albany, New York  
August 25, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER