

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TOWER DELICATESSEN, 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 ~~XXXXXX~~ Period ~~(s)~~
September 1, 1970 through August 31, 1973.

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 14th day of February, 1978, ~~he~~ served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Tower Delicatessen, Inc.

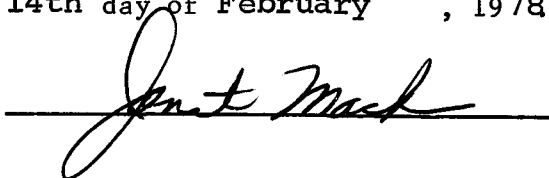
~~(XXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Tower Delicatessen, Inc.
1467 First Avenue
New York, New York 10021

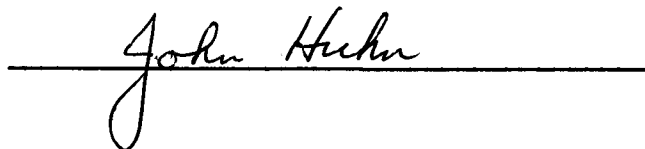
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(XXXXXX)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

14th day of February, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TOWER DELICATESSEN, 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 ~~XXXXXX~~ Period ~~(X)~~
September 1, 1970 through August 31, 1973.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1978, ~~she~~ he served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Albert Kronish

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Albert Kronish, P.A.
636 N. Terrace Avenue
Mount Vernon, New York 10552

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 ~~(XXXXXX)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

14th day of February, 1978

Janet Mack

John Huhn



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

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

February 14, 1978

**Tower Delicatessen, Inc.
1467 First Avenue
New York, New York 10021**

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 Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

TOWER DELICATESSEN, 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,
1970 through August 31, 1973.

:

Applicant, Tower Delicatessen, Inc., 1467 First Avenue, New York, New York 10021, 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, 1970 through August 31, 1973 (File No. 14364).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1977. Applicant appeared by Albert Kronish, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the determination of additional sales taxes due for the period September 1, 1970 through August 31, 1973, based upon an audit of applicant's available records by the Sales Tax Bureau, was correct.

FINDINGS OF FACT

1. During the period at issue, applicant operated a delicatessen at 1467 First Avenue, New York, New York.

2. On April 11, 1975, as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes due against applicant for the period September 1, 1970 through August 31, 1973. It consisted of taxes due of \$20,468.70, plus penalty and interest of \$7,982.80, for a total due of \$28,451.50.

3. On audit, the Sales Tax Bureau analyzed purchases made by applicant for May 1974. The Sales Tax Bureau determined the percentage of purchases for said month which were taxable when sold, and then applied said percentage to total purchases for the test period to determine adjusted taxable sales. Adjusted taxable sales were compared to reported taxable sales to determine a percentage of error. This percentage of error was applied to reported taxable sales for the entire audit period to determine the additional taxes due.

4. On April 8, 1976, the Sales Tax Bureau issued a Notice of Assessment Review, which reflected adjustments agreed upon by the parties at a conference. The additional amounts due were reduced to \$11,845.94 in tax and \$6,056.85 in penalty and interest.

5. At the hearing, the parties agreed that taxable cash purchases for the test period were about \$800.00, or approximately 15% of total cash purchases. This further reduced the basic tax liability to \$9,497.49.

6. The applicant offered no documentary or other substantial evidence to show that the recomputed additional taxes due did not reflect applicant's additional sales tax liability.

7. The applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau's determination of additional taxes due, as indicated in Finding of Fact "5," above, was determined from such information as may be available in accordance with the meaning and intent of section 1138(a) of the Tax Law.

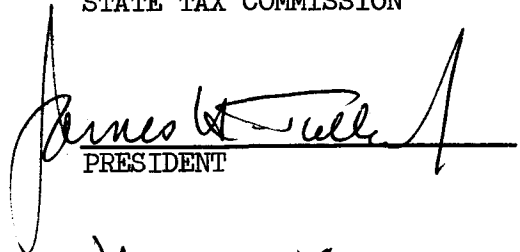
B. That the penalties and interest, in excess of the minimum statutory rate, are cancelled.

C. That the application of Tower Delicatessen, Inc. is granted to the extent indicated in Conclusions of Law "A" and "B," above; 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 April 11, 1975, and that, except as so granted, the application is in all other respects denied.

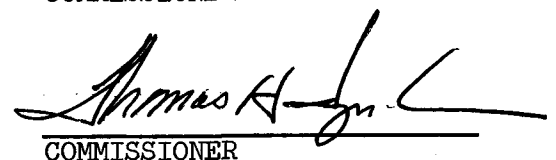
DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER