

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert & George Altschul :
d/b/a Pembroke Delicatessen : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 of the Tax Law :
for the Period 6/1/72 - 5/31/75. :

State of New York
County of Albany

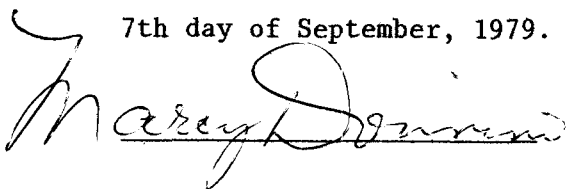
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of September, 1979, he served the within notice of Determination by mail upon Robert & George Altschul, d/b/a Pembroke Delicatessen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

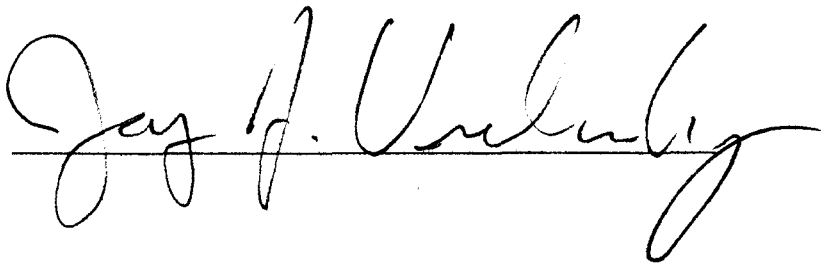
Robert & George Altschul
d/b/a Pembroke Delicatessen
844 9th Ave.
New York, NY 10019

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

Sworn to before me this
7th day of September, 1979.


Mary D. Quinn


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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Robert & George Altschul :
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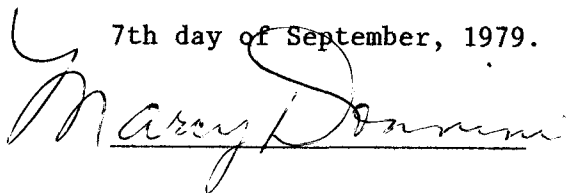
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 7th day of September, 1979, he served the within notice of Determination by mail upon Max Englander the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

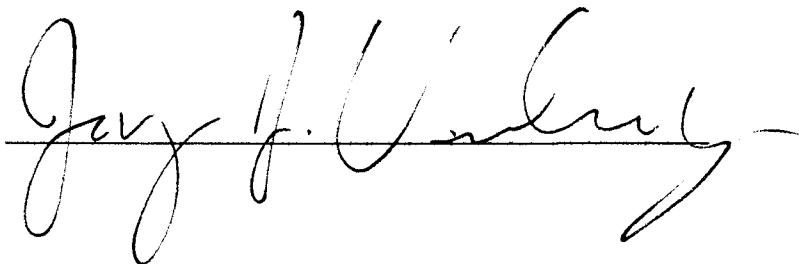
Mr. Max Englander
331 Madison Ave.
New York, NY 10017

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
7th day of September, 1979.


Mary Donnici


Jay Vredenburg

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 7, 1979

Robert & George Altschul
d/b/a Pembroke Delicatessen
844 9th Ave.
New York, NY 10019

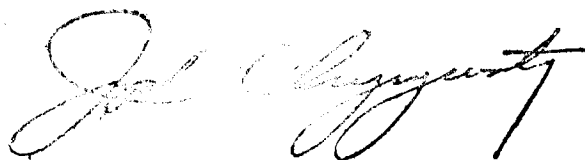
Gentlemen:

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,



cc: Petitioner's Representative
Max Englander
331 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
Robert & George Altschul	:	
d/b/a PEMBROKE DELICATESSEN	:	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 June 1, 1972 through May 31,	:	
1975.	:	
	:	

Applicant, Pembroke Delicatessen, 844 Ninth Avenue, New York, New York 10019, 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 June 1, 1972 through May 31, 1975 (File No. 15016).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1978 at 9:15 A.M. Applicant appeared by Max Englander, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the audit performed by the Sales Tax Bureau was proper and correct.

FINDINGS OF FACT

1. Applicant, Pembroke Delicatessen, was a partnership, the members of which were Robert Altschul and George Altschul.

2. During the period at issue, applicant operated a delicatessen. Sales consisted mainly of hot and cold sandwiches, coffee, soda, beer and a small variety of grocery items.

3. Applicant filed New York state and local sales and use tax returns for the period June 1, 1972 through May 31, 1975.

4. On March 19, 1976 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$10,798.33, plus penalty and interest of \$4,220.20, for a total due of \$15,018.53.

5. On audit, the Sales Tax Bureau's auditors compared gross sales from the cash receipts journal with gross sales reported on Federal income tax returns for 1973 and 1974. This comparison showed gross sales (per the Federal income tax returns) to be \$17,029.00 in excess of the cash receipts' journal. The excess sales were added to the cash receipts' journal totals for the audit period, in order to arrive at audited gross sales of \$255,999.00.

6. An observation test was performed to determine the percentage of taxable sales to gross sales. The test consisted of observing all transactions for one day and listing all non-taxable sales. The non-taxable sales represented 15.5% of the total receipts for the day. Therefore, taxable sales represented 84.5% of the total receipts. The taxable ratio of 84.5% was applied to the adjusted gross sales to determine taxable sales of \$216,319.00 and the additional tax due of \$10,798.33.

7. The Sales Tax Bureau discovered an error in the audit findings prior to the hearing. The computation of the taxable ratio included the New York State and City cigarette tax. A revised schedule of sales tax deficiency was submitted showing adjusted tax due of \$9,537.78.

8. Applicant contended that in 1972 and 1973, the business was a grocery store and sold considerably more non-taxable items. Because of this change in business operations, applicant alleged that the test used inaccurately reflected taxable sales for approximately one-half the audit period.

9. Applicant failed to submit any documentary evidence to show that there was any significant change in business operations during the period at issue or that the taxable ratio computed by the Sales Tax Bureau's auditor was incorrect.

CONCLUSIONS OF LAW

A. That the audit of applicant's books and records by the Sales Tax Bureau followed generally accepted audit procedures consistent with the nature of the business operations. The revised findings as to the amount of additional sales tax due for the period June 1, 1972 through May 31, 1975 are correct.

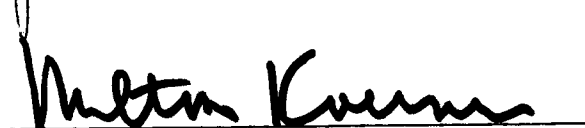
B. That the application of Pembroke Delicatessen is granted to the extent of reducing the additional tax due for the period June 1, 1972 through May 31, 1975 from \$10,798.33 to \$9,537.78; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 19, 1976 and that, except as so granted, the application is in all other respects denied.

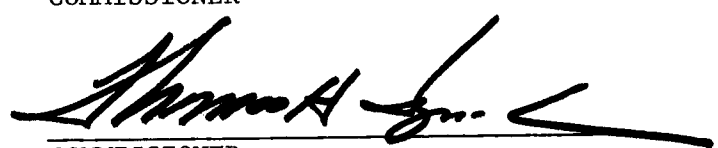
DATED: Albany, New York

SEP 7 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER