

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Black Life, Inc. :
d/b/a Black Life Discounts : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 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 6th day of June, 1980, he served the within notice of Determination by mail upon Black Life, Inc., d/b/a Black Life Discounts, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Black Life, Inc.
d/b/a Black Life Discounts
c/o Fearonce G. LaLande
St. Albans, NY 11412

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
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Black Life, Inc. :
d/b/a Black Life Discounts : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 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 6th day of June, 1980, he served the within notice of Determination by mail upon Audrey F. Jacobs 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. Audrey F. Jacobs
430 Convent Ave.
New York, NY 10031

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
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

Black Life, Inc.
d/b/a Black Life Discounts
c/o Fearonce G. LaLande
114-34 203rd St.
St. Albans, NY 11412

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Audrey F. Jacobs
430 Convent Ave.
New York, NY 10031
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
BLACK LIFE, INC., D/B/A BLACK LIFE DISCOUNTS	:	DETERMINATION
and	:	
Fearonce G. LaLande,	:	
Individually and as Officer	:	
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.	:	

Applicants, Black Life, Inc., d/b/a Black Life Discounts, and Fearonce G. LaLande, individually and as officer, 114-34 203rd Street, St. Albans, New York 11412, 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. 16499).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1979 at 10:45 A.M. and was continued before Arthur Johnson, Hearing Officer, on September 20, 1979 at 2:45 P.M. Applicants appeared by Audrey F. Jacobs, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Bruce Zalaman and Irwin Levy, Esqs., of counsel).

ISSUE

Whether the audit procedures used by the Audit Division were proper and the resultant findings of additional taxable sales for the period June 1, 1972 through May 31, 1975 were correct.

FINDINGS OF FACT

1. During the period at issue, applicant, Black Life, Inc., d/b/a Black

Life Discounts, ("Black Life") operated two variety stores (one located in Hollis, New York and the other located in St. Albans, New York) which sold such items as cigarettes, newspapers, records, candy and cosmetics.

2. On August 4, 1976, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants Black Life Inc., d/b/a Black Life Discounts and Fearonce G. LaLande, individually and as officer, for the period June 1, 1972 through May 31, 1975 in the amount of \$13,355.84, plus penalty and interest of \$6,152.95, for a total of \$19,508.79.

3. Black Life executed consents extending the period for assessment of sales and use taxes for the period June 1, 1972 through May 31, 1975, to December 20, 1976.

4. The Audit Division's sales tax auditor analyzed purchase invoices for the months of August, 1974 and February, 1975 and categorized said purchases as cigarettes, cosmetics, film, records and other purchases. The auditor verified that the total of each purchases' category agreed with totals in the general ledger and the purchases per general ledger were in agreement with the Federal income tax returns. The purchase analysis also disclosed that 16.77 percent of purchases categorized as "other" (newspapers and magazines) and 28.95 percent of cosmetics (aspirin and cough drops) were items not subject to tax when resold. A markup test was performed for selected items in each of the above categories using costs for that period and selling prices in effect during February, 1975. The markups were applied to applicable purchases from the general ledger after excluding nontaxable items which resulted in additional taxable sales of \$185,578.00.

Black Life's gross sales reported on its sales tax returns substantially agreed with the general ledger; however, gross sales reported on Federal

income tax returns filed for fiscal years ending April 30, 1973 and April 30, 1974 were \$31,492.00 greater than recorded in the general ledger for the same period.

5. Black Life contended it maintained and provided the auditor with accurate books and records and, therefore, it was not necessary to compute sales by marking up purchases. Black Life further contended that the audit did not give consideration to inventory, pilferage and sales to tax exempt organizations.

Black Life's inventory increased \$2,170.00 from May 1, 1972 to April 30, 1974; however, there was no evidence submitted to show that inventory was greater on May 31, 1975 than it was on June 1, 1972. Black Life also failed to present any substantial evidence to support its contentions regarding pilferage or exempt sales.

6. The books and records maintained by Black Life were insufficient for the Audit Division to determine the exact amount of taxable sales.

CONCLUSIONS OF LAW

A. That the audit was performed in accordance with standard auditing procedures established by the Audit Division and that such procedures used to determine Black Life's taxable sales were proper pursuant to section 1138(a) of the Tax Law. The resultant findings of additional sales tax due for the period June 1, 1972 through May 31, 1975 were supported by substantial documentary evidence and Black Life failed to show that the determination of additional sales taxes due was incorrect.

B. That the Audit Division was not required to accept the taxable sales recorded in Black Life's books and records; that the audit procedures described in Finding of Fact "4" showed that Black Life's sales records were incorrect.

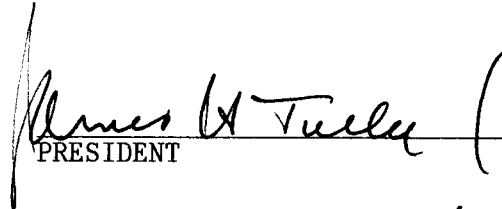
C. That the application of Black Life Inc., d/b/a Black Life Discounts and Fearonce G. LaLande, individually and as officer, is denied and the Notice

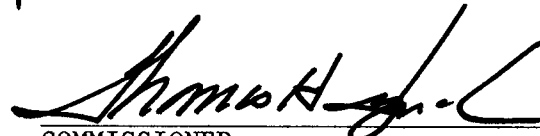
of Determination and Demand for Payment of Sales and Use Taxes Due issued August 4, 1976 is sustained.

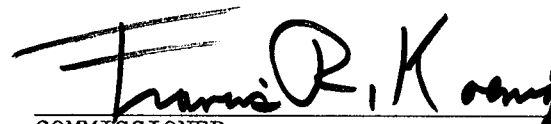
DATED: Albany, New York

STATE TAX COMMISSION

JUN 6 1980


PRESIDENT


COMMISSIONER


COMMISSIONER