

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FHS CIGAR CO., 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 and 29 of the :  
Tax Law for the ~~Year(s) or~~ Period ~~(s)~~ :  
September 1, 1972 through August 31, 1975.

State of New York  
County of Albany

John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of February , 1979 , she served the within  
Notice of Determination by ~~(certified)~~ mail upon FHS Cigar Co., Inc.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

FHS Cigar Co., Inc.  
460 Seventh Avenue  
New York, NY 10001

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)~~  
~~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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FHS CIGAR CO., 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 and 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
September 1, 1972 through August 31, 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 14th day of February , 1979 , he served the within  
Notice of Determination by ~~(certified)~~ mail upon David Ehrlich, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:  
David Ehrlich, CPA  
David Ehrlich & Co.  
380 Madison Avenue  
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

14th day of February , 1979.

Marilyn J. Papineau

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, 1979**

**FHS Cigar Co., Inc.  
460 Seventh Avenue  
New York, NY 10001**

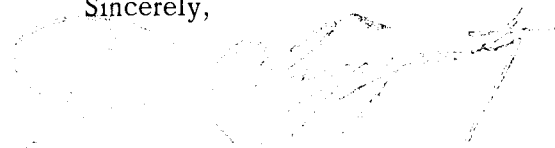
**Gentlemen:**

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 Chyrywat  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application :  
of :  
FHS CIGAR CO., 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, :  
1972 through August 31, 1975. :  
:

---

Applicant, FHS Cigar Co., Inc., 460 Seventh Avenue, New York, New York 10001, 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, 1972 through August 31, 1975 (File No. 15317).

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 May 16, 1978 at 2:45 P.M. Applicant appeared by David Ehrlich, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether applicant's sales tax returns properly reflected the correct amount of sales and use taxes due.

FINDINGS OF FACT

1. Applicant, FHS Cigar Co., Inc., filed New York state and local sales and use tax returns for the period September 1, 1972 through August 31, 1975.

2. As the result of a field audit performed by the Sales Tax Bureau, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated March 31, 1976 was issued against FHS Cigar Co., Inc. in the amount of \$7,550.43, plus penalty and interest of \$2,844.51, for a total of \$10,394.94.

3. Applicant operated a luncheon business in mid-town Manhattan. Sales consisted mainly of fast-food items, tobacco products and candy. Other sales include non-taxable items such as packaged cakes and fruit juices. There were no seating facilities on the premises.

4. On audit, the Sales Tax Bureau determined that applicant did not collect sales tax. This determination was based on the fact that the auditor observed sales being rung on the cash register in a lump-sum amount, and also that no sign was displayed showing the individual price of items and the applicable sales tax thereon. Applicant divided gross taxable receipts by one hundred plus the tax rate, to arrive at taxable sales. For the audit period, the amount deducted from gross receipts and reported as sales tax by applicant was \$52,846.24. The Sales Tax Bureau considered this amount as additional receipts and assessed sales tax of \$3,923.65 thereon.

The audit also disclosed sales tax due of \$2,693.58 (based on a disallowance of non-taxable sales) and use tax due of \$933.20 (based on the purchase of various expense items). These two areas are not being disputed.

5. Applicant had a sign displayed on the premises stating that the price of all items sold included sales tax. The sign also had an illustration showing the selling price of one item, the amount of tax to be collected and the total sales price.

6. Applicant did not give a receipt to its customers.

CONCLUSIONS OF LAW

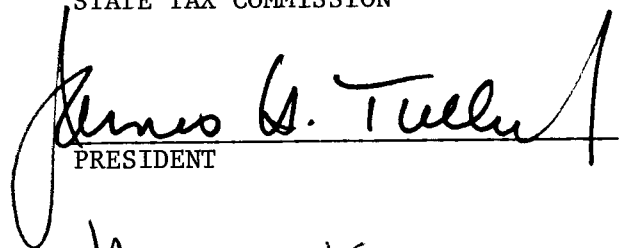
A. That the sign displayed by applicant was sufficient evidence to show that sales tax was collected on applicant's sales.

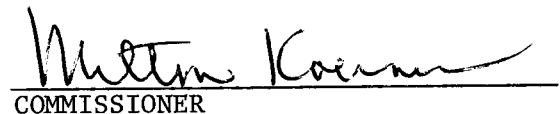
B. That applicant reported and paid the proper amount of sales tax with respect to the taxable sales reported for the period September 1, 1972 through August 31, 1975; therefore, the additional sales tax assessed in the amount of \$3,923.65 is cancelled.

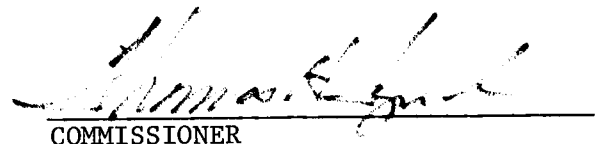
C. That the application of FHS Cigar Co., Inc. is granted to the extent indicated in Conclusion of Law "B"; that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated March 31, 1976 and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York  
February 14, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER