

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Richard L. Green :
d/b/a R & S Market : 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 12/1/71 - 8/31/74. :

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 17th day of August, 1979, he served the within notice of Determination by mail upon Richard L. Green, d/b/a R & S Market, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard L. Green
d/b/a R & S Market
249 Robinson St.
Binghamton, NY 13904

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
17th day of August, 1979.

Victoria Mary

Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Richard L. Green
d/b/a R & S Market
249 Robinson St.
Binghamton, NY 13904

Dear Mr. Green:

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 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,

A handwritten signature in cursive script, likely belonging to John J. Sollecito, the Director of the State Tax Commission.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
RICHARD L. GREEN : DETERMINATION
D/B/A R & 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 December 1, :
1971 through August 31, 1974. :

Applicant, Richard L. Green d/b/a R & S Market, Riverview Road, Kirkwood, New York 13795, 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 December 1, 1971 though August 31, 1974 (File No. 11108).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 44 Hawley Street, Binghamton, New York, on September 27, 1978 at 2:45 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

ISSUES

I. Whether the taxable-ratio audit technique used by the Sales Tax Bureau accurately reflected applicant's taxable sales.

II. Whether applicant is liable for sales tax imposed on the total receipts of items which, when sold individually, prohibit the collection of tax from the customer, pursuant to the tax bracket schedules adopted by the Sales Tax Bureau.

III. Whether the penalties and interest in excess of the minimum statutory rate imposed by the Sales Tax Bureau, should be cancelled.

FINDINGS OF FACT

1. Applicant, Richard L. Green d/b/a R & S Market, filed New York state and local sales and use tax returns for the period December 1, 1971 through August 31, 1974.
2. On January 8, 1975 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 \$3,657.44, plus penalty and interest of \$917.55, for a total of \$4,574.99, for the period December 1, 1971 through August 31, 1974.
3. Applicant operated a neighborhood grocery store. In addition, applicant produced and sold baked goods and pizza. The business was discontinued on December 31, 1977.
4. On audit, the Sales Tax Bureau traced cash register tapes selected at random to entries made in the sales journal. The sales journal's totals agreed with gross sales reported on New York sales tax returns and on Federal income tax returns.

The Sales Tax Bureau then reviewed purchase invoices for the months of March, 1972, May, 1973 and April, 1974. It listed any item purchased that would be taxable when sold. A taxable ratio of 48% was computed by dividing taxable purchases listed by total purchases of resale items. The taxable ratio was applied to gross sales, to arrive at audited taxable sales of \$77,459.60. Reported taxable sales of \$17,780.94 were deducted from this amount, which left additional taxable sales of \$59,678.66 and tax due thereon of \$3,657.44.
5. The discrepancy in taxable sales was due in part to applicant's failure to report the receipts from candy selling at 10 cents or less. Applicant did not report these receipts because the tax could not be collected from the customer; thus, he contended that said receipts were not from taxable sales.

6. Applicant submitted two illustrations purporting to show the inaccuracy of using a taxable ratio based on purchases to determine taxable sales. One illustration computed a taxable sale based on a taxable ratio. The second illustration, using the same amounts, computed a lesser taxable sale by applying a markup percentage to purchases.

7. Applicant's overall markup percentages on Federal income tax returns for 1972 and 1973 were 18% and 22%, respectively. Applicant contended that his markup on taxable items was 10%.

8. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau followed generally accepted audit procedures and tests consistent with the nature of the business operation; therefore, the audit accurately determined additional taxable sales and use taxes due for the period December 1, 1971 through August 31, 1974.

B. That applicant is liable for tax on total receipts from the sales of taxable items, although tax bracket schedules prohibit applicant from collecting the tax from the customer on the individual sale of such items, in accordance with the provisions of sections 1132(b) and 1133(a) of the Tax Law. Komp v. State Tax Commission, 56 Misc.2d 824.

C. That the interest in excess of the minimum statutory rate and the penalty imposed pursuant to section 1145(A) of the Tax Law are cancelled.

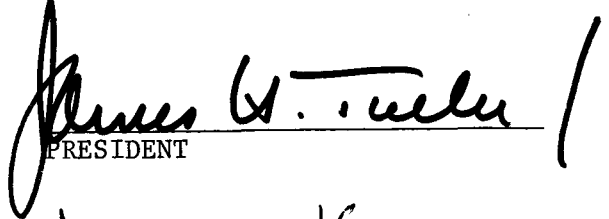
D. That the application of Richard L. Green d/b/a R & S Market is granted to the extent indicated in Conclusion of Law "C"; that the Sales Tax Bureau is directed

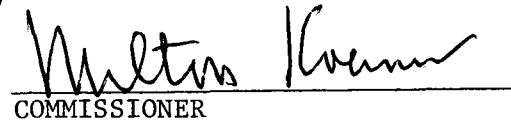
to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 8, 1975; and that, except as so granted, the application is in all other respects denied.

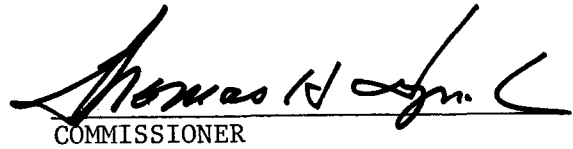
DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO Mr. Coburn

No better address.

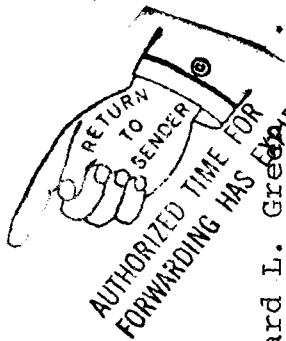
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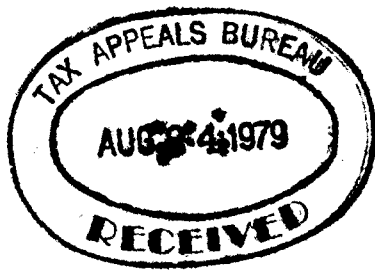
M-75 (5/76)

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Richard L. Greer
d/b/a R. & S. Marked
249 Robinson St.
Binghamton, New York 13904



Stamp for
bureau address



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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

REMAILED: August 22, 1979

August 17, 1979

Richard L. Green
d/b/a R & S Market
249 Robinson St.
Binghamton, NY 13904

Dear Mr. Green:

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 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

Taxing Bureau's Representative



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO Mr. Coburn

Remailed August 22, 1979

8/22/79

Joseph Chyrywaty

M-75 (5/76)

TA-26 (4-76) 25M

STATE OF NEW YORK

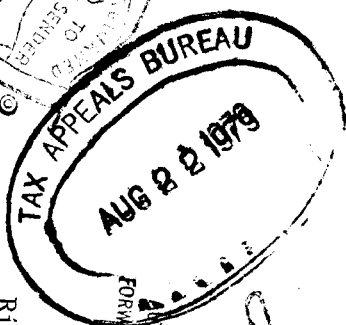
Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

RETURNED
TO
SENDER
AUTHORIZED TIME FOR
FORWARDING HAS EXPIRED

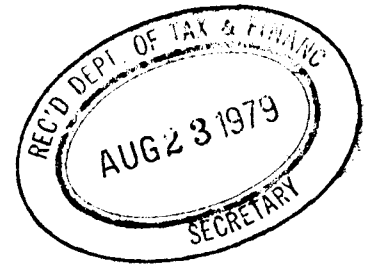


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SENDER
AUTHORIZ... TIME FOR
FORWARDING HAS EXPIRED



Richard L. Green
d/b/a R & S Market
249 Robinson St.
Binghamton, NY 13904

STATE OF NEW YORK
STATE TAX COMMISSION



In the Matter of the Petition

of

RICHARD L. GREEN

D/B/A R & S MARKET

For ~~XX~~
a Revision of a Determination or a Refund
of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~
December 1, 1971 through August 31, 1974.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg,

, 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 22nd day of August, 1979, ~~she~~ served the within

Notice of Determination by ~~XXXXXXXXXX~~ mail upon Richard L. Green d/b/a

R & S Market ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Richard L. Green
d/b/a R & S Market
249 Robinson St.
Binghamton, New York 13904

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

Sworn to before me this

day of _____, 19 .

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
RICHARD L. GREEN : DETERMINATION
D/B/A R & S Market :
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to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 8, 1975; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER