

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
A. Karim Mheiny :
d/b/a A. Karim Mheiny Grocery & Deli : 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 6/1/73 - 2/29/76. :

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 14th day of December, 1979, he served the within notice of Determination by mail upon A. Karim Mheiny, d/b/a A. Karim Mheiny Grocery & Deli, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

A. Karim Mheiny
d/b/a A. Karim Mheiny Grocery & Deli
284 Highcrest Dr.
Butler, NJ

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
14th day of December, 1979.

Joanne Knapp

J. Vredenburg

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

December 14, 1979

A. Karim Mheiny
d/b/a A. Karim Mheiny Grocery & Deli
284 Highcrest Dr.
Butler, NJ

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
A. KARIM MHEINY D/B/A	:	
A. KARIM MHEINY GROCERY AND DELI	:	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, 1973 through	:	
February 29, 1976.	:	

Applicant, A. Karim Mheiny d/b/a A. Karim Mheiny Grocery and Deli, 284 Highcrest Drive, Butler, New Jersey, 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, 1973 through February 29, 1976 (File No. 16896).

A small claims hearing was held before Raymond J. Seigel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 20, 1978. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the results of an audit by the Sales Tax Bureau properly reflect applicant's New York state and local sales and use tax liability for the period June 1, 1973 through February 29, 1976.

FINDINGS OF FACT

1. Applicant, A. Karim Mheiny d/b/a A. Karim Mheiny Grocery and Deli, filed New York state and local sales and use tax returns for the period June 1, 1973 through February 29, 1976.

2. On September 29, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period

June 1, 1973 through February 29, 1976, for \$7,956.79 in additional sales and use taxes, plus \$3,389.53 in penalty and interest, for a total of \$11,346.32. The Notice was issued as the result of a field audit which disclosed additional taxable sales of \$103,974.00, which resulted in additional sales tax due of \$7,816.79, plus compensating use tax due of \$140.00.

3. The Sales Tax Bureau's auditor examined purchases for the months of July 1975 and January 1976, to determine the ratio of taxable purchases (items which are subject to tax when sold). The auditor then performed a markup test on taxable purchases for the month of April 1976. The markup percentages were then applied to taxable purchases for the audit period, to determine total taxable sales. The difference between this amount and the reported taxable sales equalled \$103,974.00.

4. Applicant operated a grocery store and delicatessen at 272 Driggs Avenue, Brooklyn, New York. Applicant relied on his accountant to prepare the state and local sales and use tax returns. The taxable sales made by applicant consisted of cigarettes, soda, beer, and miscellaneous sundry items. Approximately 8% of applicant's gross sales were reported as being taxable for the audit period June 1, 1973 through February 29, 1976.

5. Applicant contended that all taxable sales were as reported. Applicant did not submit any documentary evidence to support his claim.

CONCLUSIONS OF LAW

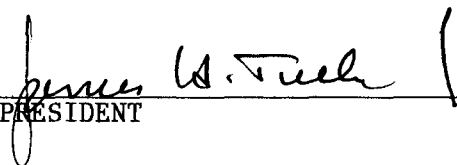
A. That the Sales Tax Bureau properly conducted the audit using such information as may be available, in accordance with the meaning and intent of section 1138(a) of the Tax Law.

B. That the application of A. Karim Mheiny d/b/a A. Karim Mheiny Grocery and Deli is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 29, 1976 is sustained.

DATED: Albany, New York

DEC 14 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER