

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SUZA CANDY SHOP, INC.

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s) or~~ Period(s) :
March 1, 1970 through February 7, 1972

AFFIDAVIT OF MAILING

State of New York
County of Albany

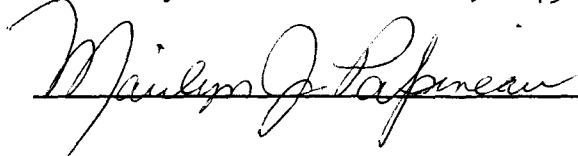
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of March , 1979, she served the within
Notice of Determination by ~~(certified)~~ mail upon Suza Candy Shop, Inc.

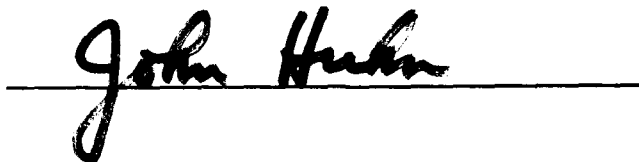
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Suza Candy Shop, Inc.
c/o Joseph Jaeger
214-15 18th Avenue
Bayside, New York 11360
and by depositing same enclosed in a postpaid properly addressed 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

15th day of March , 1979.







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

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

March 15, 1979

Suza Candy Shop, Inc.
c/o Joseph Jaeger
214-15 18th Avenue
Bayside, New York 11360

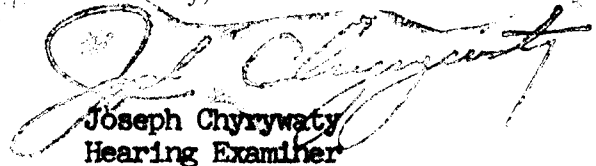
Mr. Jaeger:

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: ~~Partnership Representative~~

Taxing Bureau's Representative

STATE TAX COMMISSION

Applicant, Suza Candy Shop, Inc., c/o Joseph Jaeger, 214-15 18th Avenue, Bayside, New York 11360, 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 March 1, 1970 through February 7, 1972 (File No. 10314).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1978 and continued on May 16, 1978. Applicant appeared by its president, Joseph Jaeger. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. and Frank Levitt, Esq., of counsel).

Whether the determination of additional taxes due as computed by the Sales Tax Bureau was correct.

FINDINGS OF FACT

1. On April 19, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period March 1, 1970 through February 7, 1972 against applicant for \$2,242.02, plus penalty and interest of \$619.97, for a total due of \$2,861.99.

2. Applicant, Suza Candy Shop, Inc., operated a retail candy store-newspaper stand at 163 East 170th Street, Bronx, New York, until February 7, 1972, when said business was sold to Arthur Jensen, 1403 Grand Concourse, Bronx, New York, for \$10,000.00, including fixed assets valued at \$500.00.

3. On February 8, 1972, the Sales Tax Bureau received a Notification of Sale, Transfer or Assignment in Bulk (Form ST-274), signed by the purchaser, Arthur Jensen, and a check in the amount of \$35.00 in payment of sales tax on the value of the fixed assets.

4. On March 13, 1972, the Sales Tax Bureau sent applicant a Bulk Sale Questionnaire for Restaurants, Grocery Stores, Etc. The applicant returned said form, partially completed, on March 23, 1972. The Sales Tax Bureau consequently estimated that applicant had a taxable sales ratio of 65% and issued the aforementioned Notice.

5. On February 23, 1973, an informal conference was held at the Bronx District Office. Based on information provided by applicant, the taxable sales ratio was determined to be 54%.

6. Applicant presented no documentary or other substantial evidence to support its claim that the taxable sales ratio was lower than 54%.

CONCLUSIONS OF LAW

A. That the 65% taxable sales ratio used by the Sales Tax Bureau to compute the additional sales tax due did not properly reflect applicant's sales tax liability. The correct taxable sales ratio is 54% as determined at the informal conference held on February 23, 1973.

B. That the application of Suza Candy Shop, Inc. is granted to the extent that the taxable sales ratio is reduced to 54%; 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 April 19, 1973; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER