

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TAHIR ALOMARI

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, 1971 through August 31, 1974.

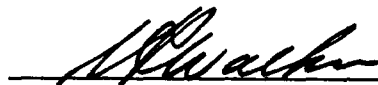
State of New York
County of Albany

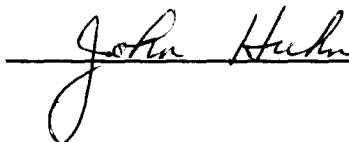
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978, ~~he~~ served the within
Notice of Determination by (~~certified~~) mail upon Tahir Alomari
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Tahir Alomari
401 Schenectady Avenue
Brooklyn, New York 11212
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

24th day of April , 1978.





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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978, ~~he~~ served the within
Notice of Determination by (~~certified~~) mail upon Anthony K. Dilimetin

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Anthony K. Dilimetin, Esq.
60 East 42nd Street
New York, New York 10017

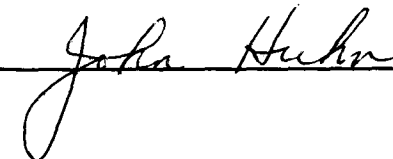
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Sworn to before me this

24th day of April , 1978







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

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

April 24, 1978

Mr. Tahir Alomari
401 Schenectady Avenue
Brooklyn, New York 11212

Dear Mr. Alomari:

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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

Applicant, Tahir Alomari, 401 Schenectady Avenue, Brooklyn, New York 11212, 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, 1971 through August 31, 1974 (File No. 10465).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 10, 1977 at 1:15 P.M. The applicant appeared by Anthony K. Dilimetin, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

I. Whether the Sales Tax Bureau timely issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Tahir Alomari.

II. Whether an offer of proposed settlement submitted by the applicant for approximately 50% of the amount of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due constitutes an accord and satisfaction or an offer in compromise.

III. Whether the determination of additional taxes due, based upon an audit of applicant's available records, was correct.

FINDINGS OF FACT

1. Applicant, Tahir Alomari, filed New York state and local sales and use tax returns for the period December 1, 1971 through August 31, 1974.

2. On June 19, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period September 1, 1971 through August 31, 1974. Said Notice asserted taxes due of \$12,007.53, plus penalty and interest of \$4,219.66, for a total due of \$16,497.19. The Notice so issued was based on a field audit of applicant's available records.

3. On or about November 13, 1974, applicant, Tahir Alomari, signed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law. This consent provided that taxes for the period September 1, 1971 through August 31, 1974 could be determined on or before December 20, 1975.

4. On audit, the only purchase invoices available to the Sales Tax Bureau were grocery purchase invoices for the month of October, 1974 and cigarette purchase invoices for the month of December, 1972. The total purchases of grocery items for October, 1974 amounted to \$4,674.69. Cigarette purchases for December, 1972 amounted to \$2,291.85. The auditor considered the purchases for the month of October, 1974 as representative and used it as a basis for determining audited sales of \$320,157.72 for the audit period. The auditor used mark-up percentages based on applicant's Federal income tax returns for the years 1972 and 1973. The auditor determined that 55.38% of applicant's sales were taxable for the test period. He then determined that applicant had under-reported taxable sales by \$168,214.00 for the audit period.

5. Applicant was the owner and operator of a retail grocery store at 401 Schenectady Avenue, Brooklyn, New York, and was a registered vendor. He testified at the hearing that he did not keep or maintain any regular books of account, but rather kept a record of his business transactions in his head and would so furnish the accountant with required figures.

6. Applicant failed to submit any documentary evidence to refute the audit findings. Applicant also claimed that he made purchases on behalf of others; however, he did not present any resale certificates with respect thereto.

7. Applicant contended that during the month of October, 1974 and prior thereto, he occasionally purchased cigarettes "on behalf of affiliated and associated store operators." No proof was submitted by him that he was engaged in the sale of merchandise for resale. Applicant further contended that he was not advised of his rights when he signed the waiver extending the period to issue an assessment. The facts adduced at the hearing clearly indicate that the waiver was voluntarily signed by him and that he understood the nature of the document.

8. Applicant further contended that an offer was made by a representative of the Sales Tax Bureau to reduce the assessment to \$8,330.37 and that this constituted an accord and satisfaction. The offer was never approved by the Sales Tax Bureau or the State Tax Commission.

CONCLUSIONS OF LAW

A. That the Consent extending the period within which to issue an assessment was valid and made voluntarily.

B. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due was timely issued against the applicant.

C. That the rules generally applicable to accords and satisfactions do not apply to a compromise or settlement of taxes.

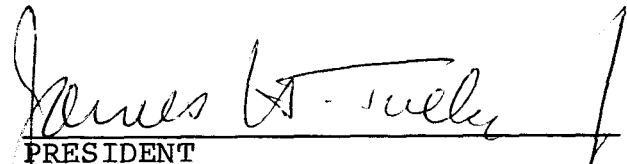
(See Mertens Law of Federal Income Taxation, Vol. 9 §52.07)

There is no provision in the Tax Law for a settlement of taxes based on the hazards of litigation. An offer in compromise must conform to the provisions of section 171 of the Tax Law. The applicant has failed to establish that he is entitled to such relief.

D. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 19, 1975, based upon an audit of applicant's available records, is correct; that such tax was properly determined to be due in accordance with the meaning and intent of section 1138 of the Tax Law; therefore, the application of Tahir Alomari is denied.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER