

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Alanlee Pharmacy, Inc. :

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 6/1/73-5/31/76. :

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 18th day of June, 1980, he served the within notice of Determination by mail upon Alanlee Pharmacy, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alanlee Pharmacy, Inc.
721 9th Ave
New York, NY 10019

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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Alanlee Pharmacy, Inc. :

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for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
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for the Period 6/1/73-5/31/76. :

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 18th day of June, 1980, he served the within notice of Determination by mail upon Lester P. Schwartz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Lester P. Schwartz
26 Court St.
Brooklyn, NY 11201

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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 18, 1980

Alanlee Pharmacy, Inc.
721 9th Ave
New York, NY 10019

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
Lester P. Schwartz
26 Court St.
Brooklyn, NY 11201
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALANLEE PHARMACY, 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 June 1, 1973 through May 31,	:	
1976.	:	

Applicant, Alanlee Pharmacy, Inc., 721 9th Avenue, New York, New York 10019, 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 May 31, 1976 (File No. 18621).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 12, 1978 at 2:45 P.M. Applicant appeared with Lester P. Schwartz, CPA. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the Audit Division's audit of applicant's books and records accurately reflected an additional sales tax liability for the period June 1, 1973 through May 31, 1976.

II. Whether the penalty and interest in excess of the minimum statutory rate, which were imposed pursuant to section 1145(a) of the Tax Law, should be waived.

FINDINGS OF FACT

1. On May 17, 1977, as a result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due

against applicant for the period June 1, 1973 through May 31, 1976 in the amount of \$19,459.02, plus penalty and interest of \$9,272.75, for a total of \$28,731.77.

2. Applicant executed a consent extending the period for assessment of sales and use taxes for the period June 1, 1973 through May 31, 1976 to December 19, 1977.

3. Applicant operated a retail pharmacy which was located at 721 9th Avenue, New York, New York.

4. Applicant did not maintain sufficient books and records from which the Audit Division could determine the exact amount of applicant's tax liability.

5. On audit and by analyzing merchandise purchases for the month of October 1974, the Audit Division determined that purchases of items which would be taxable when resold represented 54% of total purchases for that month. This percentage was applied to total merchandise purchases for the audit period, to arrive at taxable purchases of \$397,866.00. A markup test was performed using costs and selling prices in effect at the time of the audit, which disclosed an average markup on taxable items of 48%. Additional taxable sales were determined in the amount of \$252,855.00, with tax due thereon of \$19,459.02.

6. As the result of a pre-hearing conference, the following adjustments were made to the audit findings:

Purchases	\$736,789
Less: Purchases overstated	-36,117
Inventory increase	-17,189
Adjusted purchases	<u>\$683,483</u>
 Taxable purchases 50%	 \$341,742
Markup percentage 40%	<u>136,697</u>
Taxable sales	\$478,439
Less: Pilferage 4%	<u>19,138</u>
Audited taxable sales	\$459,301
Less: Reported taxable sales	<u>353,987</u>
Additional taxable sales	<u>\$105,314</u>

Margin of Error	.2975
Tax Paid	\$ 27,220.00
Additional Tax Due	<u>\$ 8,097.95</u>

Applicant agreed to all the adjustments which were made, with the exception of the allowance for pilferage.

7. Applicant contended that 10% of its merchandise is stolen, rather than the 4% allowed by the Audit Division. Applicant further contended that spoilage and donations of merchandise to charities represent an additional 2%.

8. During the period at issue, applicant donated merchandise having a retail value of \$4,500.00 to St. Claire's Hospital and Health Center.

9. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the original audit results showing tax due of \$19,459.02 were incorrect, in that the Audit Division overstated purchases and did not consider an inventory increase.

B. That the revised tax due of \$8,097.95 as set forth in Finding of Fact "6", reflects the errors indicated in Conclusion of Law "A"; however, it does not include merchandise which was donated by applicant to charities; therefore, additional taxable sales of \$105,314.00 are reduced to \$100,814.00.

C. That applicant failed to prove by documentary or other substantial evidence that the allowance for pilferage which was used by the Sales Tax Bureau was incorrect.

D. That the penalties imposed pursuant to section 1145(a) of the Tax Law and the interest in excess of the minimum statutory rate are cancelled.

E. That the application of Alanlee Pharmacy, Inc. is granted to the extent indicated in Conclusion of Law "B" and "D"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment

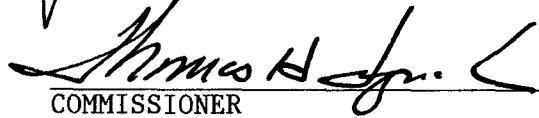
of Sales and Use Taxes Due issued on May 17, 1977; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER