

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Caas Service Center, 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 9/1/73 - 8/31/76. :

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 17th day of October, 1980, he served the within notice of Decision by mail upon Caas Service Center, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

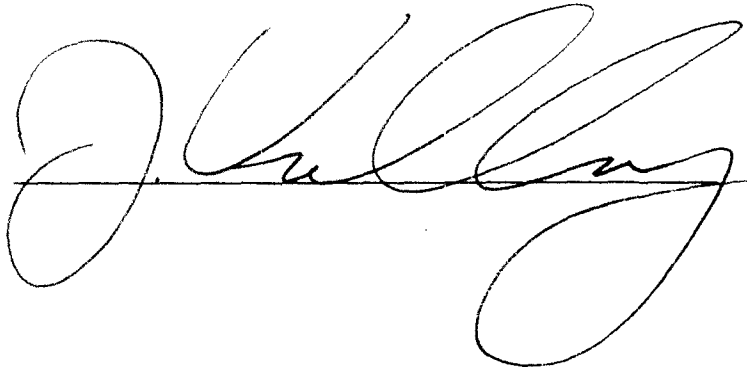
Caas Service Center, Inc.
1701 Gravesend Neck Rd.
Brooklyn, NY 11229

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 October, 1980.

Deborah A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Caas Service Center, Inc. :

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Sales & Use Tax :
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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 October, 1980, he served the within notice of Decision by mail upon Benjamin S. Clementi the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

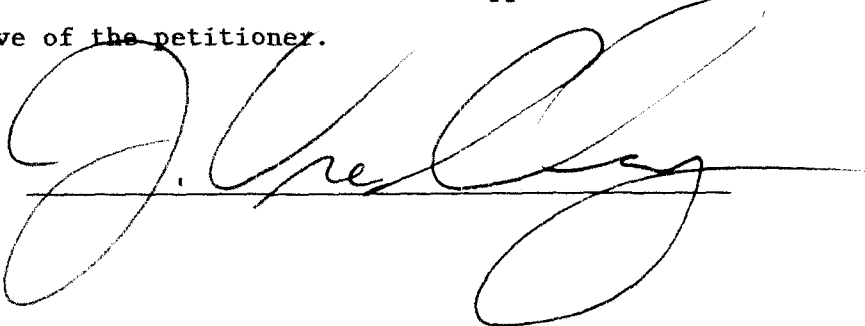
Mr. Benjamin S. Clementi
259-41 149th Ave.
Rosedale, NY 11422

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
17th day of October, 1980.

Deborah A. Bark



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

October 17, 1980

Caas Service Center, Inc.
1701 Gravesend Neck Rd.
Brooklyn, NY 11229

Gentlemen:

Please take notice of the Decision 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
Benjamin S. Clementi
259-41 149th Ave.
Rosedale, NY 11422
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CAAS SERVICE CENTER, INC.
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, 1973 through
August 31, 1976.

DECISION

Petitioner, Caas Service Center, Inc., 1701 Gravesend Neck Road, Brooklyn, New York 11229, filed a petition 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, 1973 through August 31, 1976 (File No. 19839).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 27, 1979 at 10:45 A.M. Petitioner appeared by Benjamin Clementi, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the markup computed by the Audit Division on parts, tires, batteries and accessories was proper.

II. Whether the amount of purchases on which the markups were applied were overstated.

FINDINGS OF FACT

1. On July 12, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Caas Service Center, Inc. for the period September 1, 1973 through August 31, 1976 in the amount of \$9,512.80 tax plus penalties and interest.

2. Petitioner signed a Consent Extending Period of Limitation for Assessment for the period September 1, 1973 through August 31, 1976 to October 5, 1977.

3. Records kept by petitioner were insufficient to verify actual taxable sales receipts; therefore, the Audit Division based its determination on a markup of auto parts, oil, tires, batteries and other accessories purchased. Gasoline sales were accepted as recorded.

To facilitate the markups, the Audit Division used the month of June, 1976 for parts and December, 1976 for tires, batteries and accessories as test periods. It determined a combined markup on parts, tires, batteries and accessories of 80 percent. Oil purchases were marked up by 110.3 percent per test. The markups were applied to tire, battery, part and accessory purchases of \$158,639.00, obtained from the worksheets of petitioner's accountant to arrive at audited taxable sales. After comparing the audited taxable sales to taxable sales reported, the Audit Division determined an increase of 17.9 percent which resulted in additional taxable sales of \$123,252.85 and tax due of \$9,512.80.

4. The Audit Division conceded that the audit workpapers contained arithmetical errors and that the markup on parts, tires, batteries and accessories should be 66.4 percent.

5. Petitioner contended that the purchases of parts, tires, batteries and accessories marked up in the audit results were incorrect. It submitted worksheets showing a reduction in purchases of \$4,874.00 which it contended were inventory adjustments. It did not produce any documentary evidence to show the source of the adjustments.

6. Petitioner offered no evidence to show that reasonable cause existed for not paying over any of the tax asserted due.

CONCLUSIONS OF LAW

A. That the markup on petitioner's parts, tires, batteries and accessories is 66.4 percent as found in Finding of Fact "4".

B. That petitioner failed to show by credible evidence that the purchases of parts, tires, batteries and accessories marked up on audit were incorrect.

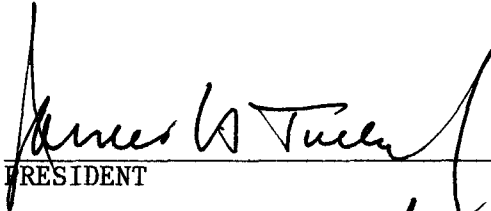
C. That records were not sufficient to determine the exact amount of tax; therefore, except as noted in Conclusion of Law "A" above, the audit performed was proper and in accordance with section 1138(a) of the Tax Law.

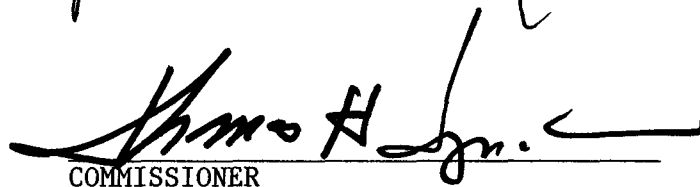
D. That the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 12, 1977, in accordance with Conclusion of Law "A" with applicable penalties and interest thereon; and that except as so granted, the petition of Caas Service Center, Inc., is in all other respects denied.

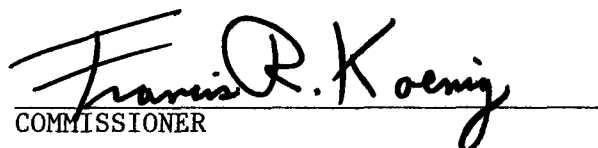
DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER