

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mrs. Avous Couch :
d/b/a Bill's Esso Station : 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 9/1/71-5/31/74. :

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 5th day of September, 1980, he served the within notice of Decision by mail upon Mrs. Avous Couch, d/b/a Bill's Esso Station, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mrs. Avous Couch
d/b/a Bill's Esso Station
R.D. 1
Clayton, NY 13624

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
5th day of September, 1980.

Robert Bank

J. Vredenburg

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

September 5, 1980

Mrs. Avous Couch
d/b/a Bill's Esso Station
R.D. 1
Clayton, NY 13624

Dear Mrs. Couch:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MRS. AVOUS COUCH	:	DECISION
d/b/a BILL'S ESSO STATION	:	
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 May 31, 1974.	:	

Petitioner, Mrs. Avous Couch d/b/a Bill's Esso Station, RD 1, Clayton, New York 13624, 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, 1971 through May 31, 1974 (File No. 10370).

On January 5, 1980, the petitioner advised the State Tax Commission in writing, that she desired to waive a small claims hearing and submitted the case to the State Tax Commission based upon the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the Audit Division's determination of additional taxes due from petitioner was proper and correct.

FINDINGS OF FACT

1. Petitioner, Mrs. Avous Couch d/b/a Bill's Esso Station, operated a gasoline service station.
2. On October 15, 1974, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes

Due against petitioner for the period September 1, 1971 through May 31, 1974 for taxes due of \$2,602.88 plus penalty and interest of \$649.19 for a total of \$3,252.07.

3. On February 27, 1975, the Audit Division issued a Notice of Assessment Review which adjusted the amount of tax due to \$2,195.55 based on the results of an informal conference held at the Watertown Branch Office on February 3, 1975. The adjusted tax due represents tax on additional gasoline sales.

4. On audit, the petitioner presented a check book register and very limited sales records. Petitioner did not have any other books and records available for examination by the Audit Division. The Audit Division obtained petitioner's gasoline purchases for 1972 and 1973, totaling 81,500 gallons, from the records of the Energy Crisis Bureau. Gasoline purchases for 1972 and 1973 were used as a basis for determining gallons sold in 1971 and 1974. An estimated selling price of \$.42 per gallon was applied to gallons sold for the period September 1, 1971 through December 31, 1973 and \$.45 per gallon was used for the periods thereafter. The resultant taxable gasoline sales amounted to \$36,237.83. Petitioner reported taxable sales of \$4,869.00 for the same period, leaving additional taxable sales of \$31,059.83 and tax due thereon of \$2,195.55.

5. On submission, petitioner offered no evidence to dispute or show that the Audit Division's determination was incorrect.

CONCLUSIONS OF LAW

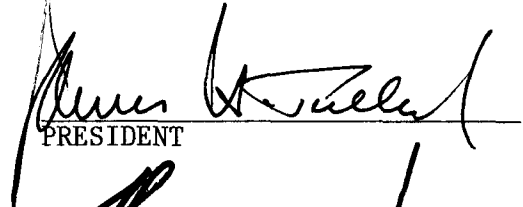
A. That the Audit Division properly determined petitioner's sales from such information and external indices as was available, in accordance with the provisions of section 1138(a) of the Tax Law and that the resultant findings were correct.

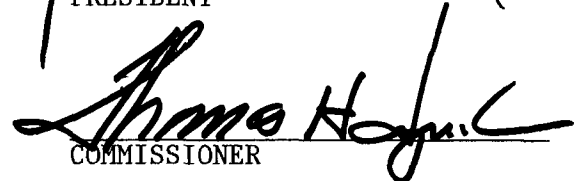
B. That the petition of Mrs. Avous Couch d/b/a Bill's Esso Station, is denied and the Notice of Determination and Demand for Payment of Sales and Use Tax Due issued October 15, 1974 as revised by the Notice of Assessment Review issued February 27, 1975 is sustained.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER