

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Courtesy Drug Stores, Inc. :  
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 3/77. :

AFFIDAVIT OF MAILING

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Courtesy Drug Stores, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Courtesy Drug Stores, Inc.  
81-83 Harbor Rd.  
Port Washington, NY 11050  
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  
22nd day of February, 1980.

Joanne Knapp

[Signature]

STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
Courtesy Drug Stores, Inc. :  
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Sales & Use Tax :  
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AFFIDAVIT OF MAILING

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Kenneth Weissberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

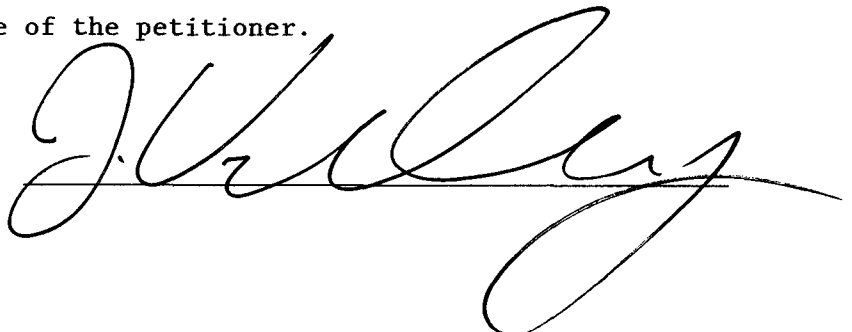
Mr. Kenneth Weissberg  
Edward Isaacs & Company  
380 Madison Ave.  
New York, NY 10017

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  
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

Courtesy Drug Stores, Inc.  
81-83 Harbor Rd.  
Port Washington, NY 11050

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  
Kenneth Weissberg  
Edward Isaacs & Company  
380 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
COURTESY DRUG STORES, 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 March, 1977.	:	

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Applicant, Courtesy Drug Stores, Inc., 81-83 Harbor Road, Port Washington, New York 11050, 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, 1977 (File No. 22129).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1979 at 9:15 A.M. Applicant appeared by Kenneth Weissburg, CPA. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether applicant is subject to penalty and interest for failing to timely file an appropriate sales tax return for the period March, 1977.

II. Whether failure to receive sales tax return forms and instructions is reasonable cause to excuse the delay in timely filing an appropriate sales tax return for the period March, 1977.

FINDINGS OF FACT

1. Applicant, Courtesy Drug Stores, Inc., operates retail drug stores in New York State. Applicant's receipts from taxable sales of tangible personal property are in excess of three hundred thousand dollars per quarter.

2. For the period March, 1977, applicant did not file a New York State

and Local Sales and Use Tax Estimated Monthly Return (Form ST-801). Applicant did timely file Form ST-801 for the period March, 1976.

3. On April 20, 1977, applicant filed a regular monthly sales tax return for the period March, 1977.

4. On July 1, 1977, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due to applicant detailing a penalty of \$5,133.97, plus interest of \$741.26, for a total of \$5,875.23. The penalty was for failure to file a New York State and Local Sales Tax Estimated Monthly Return for the period March, 1977.

5. Applicant did not receive either a New York State and Local Sales and Use Tax Estimated Monthly Return form, or instructions for the period March, 1977.

CONCLUSIONS OF LAW

A. That, Courtesy Drug Stores, Inc. was a vendor required to file an estimated New York State and local sales and use tax return for the period March, 1977 pursuant to section 1137-A(b) of the Tax Law.

B. That section 1137-A of the Tax Law is constitutional. Ames Volkswagen, Ltd. v. State Tax Commission, NY2d (Ct. of App., June 12, 1979).

C. That failure to receive a return form and instructions does not relieve applicant of its duty to file returns required by law.

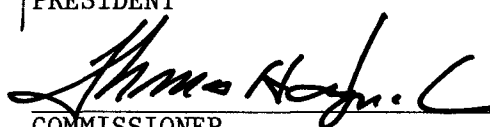
D. That the application of Courtesy Drug Stores, Inc. is denied and the Notice and Demand for Payment of Sales and Use Taxes Due dated July 1, 1977 is sustained.

DATED: Albany, New York

**FEB 22 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

COMMISSIONER