

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Nedra G. Hadous

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 9/1/73-2/28/75. :

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 20th day of June, 1980, he served the within notice of Determination by mail upon Nedra G. Hadous, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nedra G. Hadous
19497 Althen Ct.
Northville, NY 48170

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
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Nedra G. Hadous

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for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 9/1/73-2/28/75. :

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 20th day of June, 1980, he served the within notice of Determination by mail upon Charles Goldfarb 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. Charles Goldfarb
Goldfarb, Goldfarb & Pomerantz, Esqs.
314 Pennsylvania Ave.
Brooklyn, NY 11207

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
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 20, 1980

Nedra G. Hadous
19497 Althen Ct.
Northville, NY 48170

Dear Mrs. Hadous:

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
Charles Goldfarb
Goldfarb, Goldfarb & Pomerantz, Esqs.
314 Pennsylvania Ave.
Brooklyn, NY 11207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
NEDRA G. HADOUS	:	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 September 1, 1973 through	:	
February 28, 1975.	:	

Applicant, Nedra G. Hadous, 19497 Althen Court, Northville, Michigan 48170, 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, 1973 through February 28, 1975 (File No. 17570).

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 November 1, 1979 at 10:45 A.M. Applicant appeared by Charles Goldfarb, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from applicant for the period September 1, 1973 through February 28, 1975.

FINDINGS OF FACT

1. During the period at issue, applicant, Nedra G. Hadous, operated a grocery store located at 383 Arlington Avenue, Brooklyn, New York. The business was sold on December 16, 1974.

2. On May 8, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period September 1, 1973 through February 28, 1975 for taxes due of \$6,671.04

plus penalty and interest of \$1,482.87 for a total of \$8,153.91. Said notice was issued as a result of applicant's failure to submit information requested by the Audit Division. The additional sales taxes determined were based on the Audit Division's estimate that 40 percent of applicant's reported gross sales were subject to tax.

3. Subsequent to the issuance of the aforesaid notice, the applicant produced five sheets from the cash disbursements journal for April, 1974. The Audit Division determined from the names of the vendors listed on the applicant's journal sheets that 32.66 percent of total purchases for the month of April, 1974 represented items that would be taxable when resold. Included in the computation of the taxable percentage were cash purchases of \$2,257.58 which were not identifiable by vendor name and the purchase invoices were not available for examination. Applicant's total sales and purchases for the audit period revealed a markup of 44 percent. The taxable percentage of 32.66 percent was applied to total purchases to arrive at taxable purchases of \$66,037.55. The markup was applied to taxable purchases which resulted in a sales tax deficiency of \$4,439.71. The Audit Division was unable to verify a sales tax payment of \$639.28 for the period ending November 30, 1974 and is reflected in the total deficiency.

4. Applicant contended that sales consisted primarily of fruits, vegetables and cold cuts and that sales of taxable items such as beer and soda were limited because her selling prices were not competitive with other vendors in the area.

Applicant also contended that the cash purchases in the amount of \$2,257.58 referred to in Finding of Fact "3" were fruits and vegetables and therefore should not be included in the computation of the taxable percentage of 32.66 percent.

Applicant offered no documentation or other substantial evidence to support the foregoing contentions.

CONCLUSIONS OF LAW

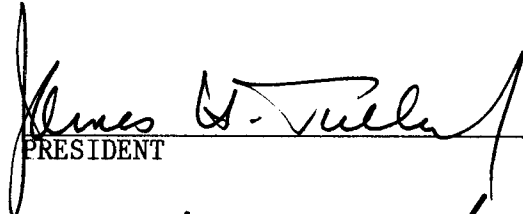
A. That the Audit Division's redetermination of additional sales taxes due based on the available information referred to in Finding of Fact "3" was proper pursuant to section 1138(a) of the Tax Law and that the resultant findings were correct.

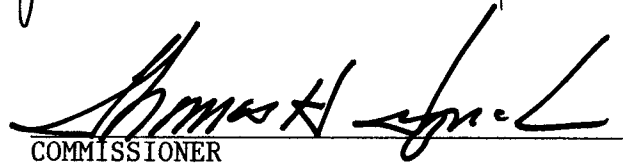
B. That the application of Nedra G. Hadous is granted to the extent of reducing the additional sales taxes due for the period September 1, 1973 through February 28, 1975 to \$4,439.71; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 8, 1975; and that except as so granted, the application is in all other respects denied.


DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER