

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Handy Andy Food 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 9/1/71-8/31/74. :

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 15th day of February, 1980, he served the within notice of Determination by mail upon Handy Andy Food Stores Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Handy Andy Food Stores Inc.  
4 North Ferry St.  
Albany, NY 12207

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  
15th day of February, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Handy Andy Food Stores Inc. :

for Redetermination of a Deficiency or a Revision :  
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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 15th day of February, 1980, he served the within notice of Determination by mail upon Carmen Treffiletti the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs Carmen Treffiletti  
and John Treffiletti  
4 N. Ferry St.  
Albany, NY 12207

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  
15th day of February, 1980.

Joanne Knapp

J. Vredenburg

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

February 15, 1980

Handy Andy Food Stores Inc.  
4 North Ferry St.  
Albany, NY 12207

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  
Carmen Treffiletti  
and John Treffiletti  
4 N. Ferry St.  
Albany, NY 12207  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application

of

HANDY ANDY FOOD 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 September 1, 1971 through  
August 31, 1974.

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Applicant, Handy Andy Food Stores, Inc., 4 North Ferry Street, Albany, New York 12207, 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, 1971 through August 31, 1974 (File No. 11006).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 23, 1979, at 10:45 A.M. Applicant appeared by Carmen Treffiletti, President, and John Treffiletti, Vice-President. The Audit Division appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether the application of a taxable purchase ratio to applicant's reported gross sales properly reflected the applicant's sales tax liability.

FINDINGS OF FACT

1. On March 19, 1975, as a result of a field audit the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Handy Andy Food Stores, Inc. for the period September 1, 1971 through August 31, 1974, for taxes due of \$30,865.48 tax plus penalties and interest.

2. On audit, the Sales Tax Bureau reviewed the applicant's purchases for three months for all five of its locations. It found that 41 percent of these purchases were taxable items. This ratio was applied to gross sales for the year 1973 and the appropriate tax computed thereon. An error rate of 39.266 percent was computed based on tax paid on its sales tax returns. This error rate was applied to the tax paid for the entire audit period which resulted in additional tax due of \$30,865.48. No allowance was made for pilferage in the audit since the taxable ratio was applied to sales made.

3. Applicant contended that the taxable ratio of purchases did not reflect the same ratio of taxable sales in that the purchases are not necessarily sold. Applicant argued that a high rate of pilferage of taxable items occurred. Therefore, it reasoned that the taxable sales ratio would be lower than the taxable ratio of purchases. Applicant offered no documentary evidence to substantiate its contention.

4. During 1973, applicant became aware of substantial losses in its operation due to a variance in gross profit between stores. An investigating firm was hired and employees screened regarding theft in the stores. The results of the investigation made in 1974 was submitted as evidence. The report showed various merchandise had been stolen as well as cash. However, it was not conclusive as to the value or taxable ratio of the merchandise stolen.

5. The Audit Division waived the penalty in this matter.

#### CONCLUSIONS OF LAW

A. That the audit performed was proper and in accordance with section 1138(a) of the Tax Law and such audit properly reflected applicant's sales tax liability.

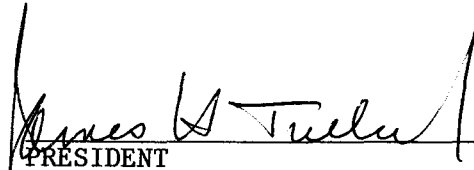
B. That the penalty is cancelled.

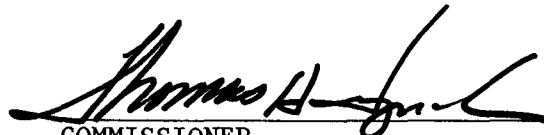
C. That the application of Handy Andy Food Stores, Inc. is granted to the extent indicated in Conclusion "B" above; that the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 19, 1975; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

**FEB 15 1980**

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER