

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Honigs General Merchandise 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 9/1/73 - 8/31/76. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Honigs General Merchandise Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

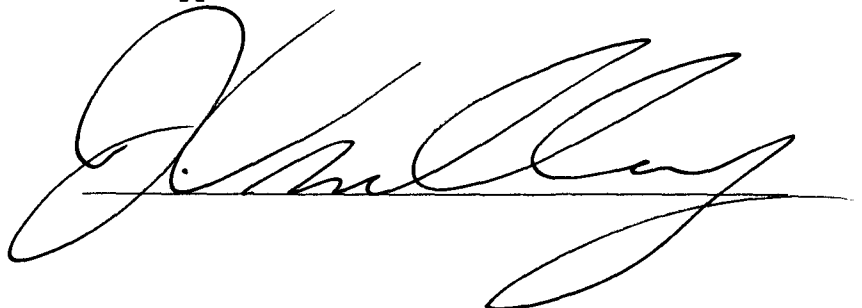
Honigs General Merchandise Inc.
919 Manhattan Ave.
Brooklyn, NY 11222

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
13th day of February, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Honigs General Merchandise 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 9/1/73 - 8/31/76. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Simon Honig the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

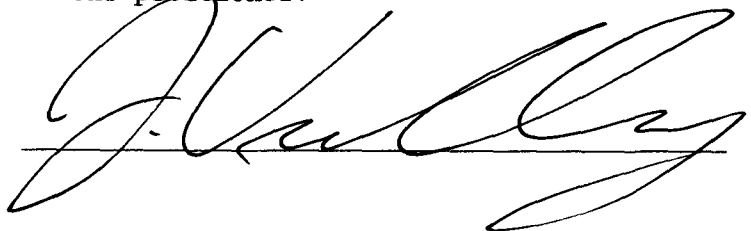
Mr. Simon Honig
c/o Honigs General Merchandise Inc.
919 Manhattan Ave.
Brooklyn, NY 11222

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
13th day of February, 1980.

Joanne Knapp



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

February 13, 1980

Honigs General Merchandise Inc.
919 Manhattan Ave.
Brooklyn, NY 11222

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
Simon Honig
c/o Honigs General Merchandise Inc.
919 Manhattan Ave.
Brooklyn, NY 11222
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HONIG'S GENERAL MERCHANDISE, 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,	:	
1973 through August 31, 1976.	:	

Applicant, Honig's General Merchandise, Inc., 919 Manhattan Avenue, Brooklyn, New York 11222, 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 August 31, 1976 (File No. 18724).

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 July 18, 1979 at 1:15 P.M. Applicant appeared by Simon Honig, President. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the results of an audit by the Audit Division accurately reflects applicant's sales tax liability for the period September 1, 1973 through August 31, 1976.

FINDINGS OF FACT

1. On May 23, 1977, as a result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Honig's General Merchandise, Inc. for the period September 1, 1973 through August 31, 1976. The notice was issued for \$2,149.16 plus penalty and interest of \$1,032.76 for a total of \$3,181.92.

2. On December 8, 1976, applicant executed a Consent Extending Period of Limitation to issue an assessment of sales and use taxes for the period at issue, to December 20, 1977.

3. Applicant filed an application for a hearing to review the aforesaid determination on June 3, 1977.

4. Applicant operated a retail clothing store located at 919 Manhattan Avenue in Brooklyn, New York.

5. On audit, the Audit Division determined that applicant's markup on merchandise purchases was 47.6 percent. This percentage was applied to purchases of \$462,928.00 to arrive at taxable sales of \$683,282.00. The amount of purchases reflected an allowance for pilferage of 1 percent, merchandise sold for resale and merchandise applicant sold at cost. The merchandise sold at cost of \$14,813.00 was added to the taxable sales computed above to determine total taxable sales for the audit period of \$698,095.00. Applicant reported taxable sales of \$670,207.00 for the same period, leaving additional taxable sales of \$27,888.00 and tax due of \$2,149.16.

6. The Audit Division and applicant stipulated that applicant donated \$3,600.00 merchandise to charitable organizations during the period at issue. It was also stipulated that twenty-two burglaries occurred where store front glass was broken to gain access to the premises. The Audit Division conceded that \$2,200.00 in merchandise was stolen based on an average theft of \$100.00 per break-in. Applicant contended that the merchandise stolen was substantially greater than the Sales Tax Bureau's estimate; however, applicant offered no documentary evidence as to the value of the stolen merchandise.

7. Applicant was also burglarized on February 25, 1976. The premises was entered through a cellar and inventory worth \$2,000.00 was stolen. Applicant

filed a complaint (#61-1051) with the 94th precinct of the New York City Police Department.

8. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the audit conducted by the Audit Division did not give consideration to the donations and burglaries as set forth in Findings of Fact "6" and "7", therefore, the results thereof were incorrect. In the absence of records to the contrary, the Audit Division's valuation of \$2,200.00 for merchandise stolen in the burglaries referred to in Finding of Fact "6" is reasonable.

B. That based on Conclusion of Law "A", the additional taxable sales determined for the period September 1, 1973 through August 31, 1976 in the amount of \$27,888.00 are reduced to \$16,375.00.

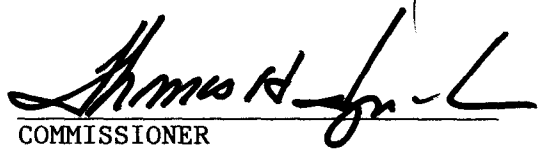
C. That the application of Honig's General Merchandise, Inc. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 23, 1977, together with interest computed at the minimum statutory rate; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

FEB 13 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER