

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Inwood Delicatessen Inc. :
and Martin J. Murphy, Officer : 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 6/1/74 - 11/30/76. :

State of New York
County of Albany

Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of February, 1980, she served the within notice of Determination by mail upon Inwood Delicatessen Inc., and Martin J. Murphy, Officer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Inwood Delicatessen Inc.
and Martin J. Murphy, Officer
31 Park Terrace W.
New York, NY 10034

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
29th day of February, 1980.

Joanne Krapp

Jean Schultz

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Inwood Delicatessen Inc. :
and Martin J. Murphy, Officer : AFFIDAVIT OF MAILING
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for the Period 6/1/74 - 11/30/76. :

State of New York
County of Albany

Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of February, 1980, she served the within notice of Determination by mail upon John R. Browne 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. John R. Browne
3631 Greystone Ave.
Bronx, NY 10463

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
29th day of February, 1980.

Joanne Krapp

Jean Schultz

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

February 29, 1980

Inwood Delicatessen Inc.
and Martin J. Murphy, Officer
31 Park Terrace W.
New York, NY 10034

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
John R. Browne
3631 Greystone Ave.
Bronx, NY 10463
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
INWOOD DELICATESSEN, INC.	:	
and	:	
MARTIN J. MURPHY	:	DETERMINATION
Individually and as President	:	
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 June 1, 1974 through	:	
November 30, 1976.	:	

Applicants, Inwood Delicatessen, Inc. and Martin J. Murphy, individually and as president, 31 Park Terrace West, New York, New York 10034, 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 June 1, 1974 through November 30, 1976 (File No. 20156).

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 9:15 A.M. Applicants appeared by John R. Browne, Bookkeeper. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the Audit Division's determination of applicant Inwood Delicatessen, Inc. additional sales tax liability for the period June 1, 1974 through November 30, 1976 was correct.

FINDINGS OF FACT

1. Applicant Inwood Delicatessen, Inc. ("Inwood") operated a delicatessen and grocery store located at 4986 Broadway, New York, New York. On September 16, 1976, the business was sold to Philip and Joycelyn Samaroo. The Audit Division was notified of the sale by a Notification of Sale, Transfer or Assignment in Bulk (ST-274) sent by the purchasers. Said notification indicated that the total sales price of the business was \$45,000.00, of which applicants were to receive \$23,000.00 in cash and the balance paid over a five-year period.

2. On March 22, 1977, 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 applicants, Inwood Delicatessen, Inc. and Martin J. Murphy, individually and as president, for the period June 1, 1974 through November 30, 1976 in the amount of \$11,679.94, plus penalty and interest of \$2,909.42, for a total of \$14,589.36.

3. Applicant maintained a disbursement journal and a cash receipts journal.

4. On audit, the Audit Division determined that Inwood's purchases of taxable items represented 38 percent of total purchases based on an analysis of taxable cash purchases for July, 1974, beer and cigarette purchases for the entire audit period and an estimated taxable percentage of 25 percent for purchases by check other than beer and cigarettes. The Audit Division determined that Inwood's gross sales were \$524,166.00 by totaling bank deposits, cash paid outs and deducting the sales tax paid. The taxable ratio of 38 percent applied to gross sales disclosed additional taxable sales of \$141,086.00, with tax due thereon of \$11,337.68. The audit also disclosed use taxes due on fixed assets of \$342.26; however, this amount is not at issue.

5. Subsequent to the audit, the Audit Division analyzed check purchases for two additional months and also found that soda was the only taxable item purchased by check other than beer and cigarettes and, as a result, recommended that the taxable ratio be reduced to 33 percent.

6. Inwood agreed that the amount of taxable check purchases used in the Audit Division's computation of the adjusted taxable ratio was correct. However, it did not accept the accuracy of taxable cash purchases on the grounds that the number of months tested were insufficient. Inwood recorded actual taxable cash purchases for the entire audit period and, when combined with purchases of beer, cigarettes and soda, revealed a taxable ratio of 21 percent.

7. Inwood's computations showed the gross sales for the period under review were \$501,166.00. The Audit Division erroneously included \$23,000.00 in gross sales which applicants received as downpayment on the sale of the business.

8. Inwood did not sell any sandwiches.

CONCLUSIONS OF LAW

A. That the Audit Division's determination of additional taxable sales based on a taxable ratio of 38 percent is erroneous. A taxable ratio of 21 percent more accurately reflects applicants' business activity and that said ratio shall be applied to gross sales of \$501,166.00 in accordance with Finding of Fact "7". Accordingly, applicants' additional taxable sales for the period June 1, 1974 through September 16, 1976 are reduced to \$47,149.00.

B. That the application of Inwood Delicatessen, Inc. and Martin J. Murphy, individually and as president, is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is hereby directed to modify

the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 22, 1977. Except as so granted, the application is in all other respects denied.

DATED: Albany, New York

FEB 29 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER