

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul Katsehtes :
d/b/a K& K Foods : 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 3/1/74 - 2/29/76. :

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 5th day of September, 1980, he served the within notice of Decision by mail upon Paul Katsehtes, d/b/a K& K Foods, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Katsehtes
d/b/a K& K Foods
3154 Spencer Dr.
Bronx, NY 10465

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
5th day of September, 1980.

Robert Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Paul Katsehtes :
d/b/a K& K Foods : 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 3/1/74 - 2/29/76. :

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 5th day of September, 1980, he served the within notice of Decision by mail upon Sol Lipper 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. Sol Lipper
Sol Lipper, Accountant & Auditor
1270 E. 72nd St.
Brooklyn, NY 11234

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
5th day of September, 1980.

Jacob Bank

J. Vredenburg

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

September 5, 1980

Paul Katsehtes
d/b/a K& K Foods
3154 Spencer Dr.
Bronx, NY 10465

Dear Mr. Katsehtes:

Please take notice of the Decision 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
Sol Lipper
Sol Lipper, Accountant & Auditor
1270 E. 72nd St.
Brooklyn, NY 11234
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| PAUL KATSEHTES d/b/a | : | DECISION |
| K & K FOODS | : | |
| 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 1, 1974 | : | |
| through February 29, 1976. | : | |

Petitioner, Paul Katsehtes d/b/a K & K Foods, 3154 Spencer Drive, Bronx, New York 10465, filed a petition 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 1, 1974 through February 29, 1976 (File No. 20596).

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 January 23, 1980 at 2:45 P.M. Petitioner appeared by Sol Lipper, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division's determination of additional sales taxes due from petitioner for the period March 1, 1974 through February 29, 1976 was proper.

FINDINGS OF FACT

1. Petitioner, Paul Katsehtes d/b/a K & K Foods, operated a luncheonette located at 573 East Tremont Avenue, Bronx, New York, until April 12, 1976 at which time the business was sold.

2. On April 13, 1977, as a result of petitioner's failure to provide information requested by the Audit Division regarding the sale of the business, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period March 1, 1974 through February 29, 1976 for taxes due of \$3,348.99, plus penalty and interest of \$1,461.86, for a total of \$4,810.85. The additional tax was based on estimated sales of \$14,000.00 per sales tax quarter. The selling price of the business of \$22,000.00 was used as a basis for estimating the amount of petitioner's sales.

3. Petitioner timely filed a petition to review the aforementioned determination.

4. Upon receipt of the petition, the Audit Division performed an audit of petitioner's available records which consisted of cash receipts and disbursements journal, sales tax returns and Federal income tax returns. Gross sales reported on said records were in agreement and disclosed a reported markup of 151 percent. However, cash register tapes or guest checks and purchase invoices were not available for the Audit Division to verify the accuracy of petitioner's books and records. The auditor therefore recommended that no adjustments be made to the tax previously determined.

5. Petitioner contended that the records were not available to the Audit Division because they were destroyed in a flood.

6. Petitioner initially did not dispute the Audit Division's method of determining the amount of tax due but argued that he is not financially capable of paying any additional taxes. However, upon further testimony, petitioner contended that the Audit Division's determination was arbitrary and did not give consideration to the lack of business caused by the deteriorated neighborhood where the store was located.

7. Petitioner's Federal income tax returns for 1974 and 1975 indicated a net profit of \$11,501.00 and \$11,326.00, respectively.

8. Petitioner offered no substantial evidence to show that the Audit Division's determination was incorrect.

CONCLUSIONS OF LAW

A. That the Audit Division, in the absence of adequate books and records, properly determined petitioner's sales from available information, as authorized in section 1138(a) of the Tax Law and that the additional taxable sales resulting therefrom are correct.

B. That the petition of Paul Katsehtes d/b/a K & K Foods is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 13, 1977 is sustained.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION

James A. Tull
PRESIDENT

Thomas H. L.
COMMISSIONER

Francis R. Koenig
COMMISSIONER

James H. Dwyer
James H. Dwyer
James H. Dwyer

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