

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Kenmore Drugs, Inc. :
Jason Silberman & Robert Turkel, Indiv. & as Off. : 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 6/1/71-2/24/74. :

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 3rd day of October, 1980, he served the within notice of Determination by mail upon Kenmore Drugs, Inc., Jason Silberman & Robert Turkel, Indiv. & as Off., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kenmore Drugs, Inc.
Jason Silberman & Robert Turkel, Indiv. & as Off.
2017 Church Ave.
Brooklyn, NY 11226

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
3rd day of October, 1980.

Robert Beck

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of
Kenmore Drugs, Inc. :
Jason Silberman & Robert Turkel, Indiv. & as Off. : AFFIDAVIT OF MAILING
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 6/1/71-2/24/74. :

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 3rd day of October, 1980, he served the within notice of Determination by mail upon Robert T. Shulman 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. Robert T. Shulman
41 Ann Dr.
Freeport, NY 11520

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
3rd day of October, 1980.

Robert Brunk

Jay Vredenburg

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

October 3, 1980

Kenmore Drugs, Inc.
Jason Silberman & Robert Turkel, Indiv. & as Off.
2017 Church Ave.
Brooklyn, NY 11226

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
Robert T. Shulman
41 Ann Dr.
Freeport, NY 11520
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
KENMORE DRUGS, INC., :
JASON SILBERMAN :
and :
ROBERT TURKEL, :
Individually and as Officers :

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 June 1, 1971 :
to February 24, 1974.

Applicants, Kenmore Drugs, Inc., 2017 Church Avenue, Brooklyn, New York 11226, and Jason Silberman and Robert Turkel, individually and as officers, 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, 1971 to February 24, 1974 (File No. 11789).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 21, 1978 at 3:10 P.M. and was continued to conclusion before Julius E. Braun, Hearing Officer, at the same offices on December 14, 1978 at 2:45 P.M. Applicant Jason Silberman appeared by Robert T. Shulman, Esq. Robert Turkel did not appear. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., and James Morris, Esq., of counsel).

ISSUE

Whether applicants are liable for additional sales taxes asserted pursuant to audit for the period June 1, 1971 to February 24, 1974.

FINDINGS OF FACT

1. On April 21, 1975, 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 Kenmore Drugs, Inc., Jason Silberman and Robert Turkel, individually and as officers, in the amount of \$12,511.12, plus penalty and interest of \$4,024.28, for a total due of \$16,535.40 for the period June 1, 1971 to February 24, 1974. (Kenmore Drugs, Inc. had executed a consent extending the period of limitation for assessment to September 20, 1975.)

2. Applicant Kenmore Drugs, Inc. ("Kenmore") operated a discount drug store in Brooklyn, New York. The store was repossessed under a security agreement with its suppliers and was subsequently sold in February, 1974. The officers were Robert Turkel, President and Jason Silberman, Secretary/Treasurer.

3. The audit was commenced on October 30, 1974. The only records available were some check disbursements which were illegible, accountant's worksheets and Federal income tax returns and sales tax returns. There were no invoices to substantiate disbursements. As a result thereof, the aforementioned notice of determination was prepared for additional taxes due estimated at \$12,511.12.

A second audit was performed in 1975 using the records held and maintained by the successor in business to applicant Kenmore. The following information was obtained: Total prescription sales for Kenmore in November, 1972 were \$3,936.50. A markup test of prescriptions based on 1975 prices resulted in a markup of 37.10 percent, which indicated that Kenmore's cost of prescriptions was \$2,870.00. The Audit Division then doubled this amount to \$5,740.00 in order to cover prescription refills and sales over-the-counter of nontaxable medicated items. The percentage of nontaxable purchases to total purchases for November, 1972 was computed to be 60.7 percent. Total purchases for the audit period were determined to be \$276,536.65,

DECLARATION

I, the undersigned, do hereby declare that the foregoing is a true and correct copy of the original as the same appears in the records of the Department of the Interior.

Witness my hand and the seal of the Department of the Interior at Washington, D.C., this 1st day of January, 1901.

Very truly yours,
J. M. Smith, Secretary of the Interior.

Approved: _____

Special Agent in Charge, U.S. Forest Service.

Witness my hand and the seal of the Department of the Interior at Washington, D.C., this 1st day of January, 1901.

Very truly yours,
J. M. Smith, Secretary of the Interior.

Approved: _____

Special Agent in Charge, U.S. Forest Service.

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Special Agent in Charge, U.S. Forest Service.

of which 60.7 percent was considered nontaxable, with the balance of 39.3 percent, or \$108,678.81, considered taxable items. Application of a 38.08 percent markup to the \$108,678.81 taxable purchases resulted in a computation that Kenmore's total taxable sales for the audit period were \$150,063.70.

Kenmore reported sales of \$42,709.00, resulting in a difference of \$107,354.70, which at 7 percent tax resulted in a revised tax due of \$7,514.83.

4. Applicant Kenmore had a closing inventory which valued at cost amounted to \$20,000.00. Credit for the closing inventory was not given by the Audit Division in its markup of purchases and computation of additional tax due.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides, in part, that if a return when filed is incorrect or insufficient, the amount of tax due shall be determined from such information as may be available.

B. That with the exception of not allowing for a closing inventory, the Audit Division properly and correctly determined the sales tax due for the audit period in compliance with the language and intent of section 1138(a) of the Tax Law.

C. That the application of Kenmore Drugs, Inc., Jason Silberman and Robert Turkel, individually and as officers, is granted to the extent indicated in Conclusion of Law "B" above. The Audit Division is hereby directed to revise the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 21, 1975 to reflect an additional tax due of \$6,755.11. As revised, the notice is sustained.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

James W. Tull
PRESIDENT

Thomas H. Tull
COMMISSIONER

Francis R. Koenig
COMMISSIONER

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