

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Kleinroth Grocery Corp. :

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 12/1/71-11/30/74. :

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 6th day of June, 1980, he served the within notice of Determination by mail upon Kleinroth Grocery Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kleinroth Grocery Corp.
84 Kings Highway
Brooklyn, NY

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
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kleinroth Grocery Corp. :
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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 12/1/71-11/30/74. :

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 6th day of June, 1980, he served the within notice of Determination by mail upon Harold Rothman 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. Harold Rothman
1142 E. 102nd St.
Brooklyn, NY 11236

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
6th day of June, 1980.

Joanne Krapp

J. Vredenburg

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

June 6, 1980

Kleinroth Grocery Corp.
84 Kings Highway
Brooklyn, NY

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
Harold Rothman
1142 E. 102nd St.
Brooklyn, NY 11236
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
KLEINROTH GROCERY CORP.	:	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 December 1, 1971 through	:	
November 30, 1974.	:	

Applicant, Kleinroth Grocery Corp., 84 Kings Highway, Brooklyn, New York 11224, 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 December 1, 1971 through November 30, 1974 (File No. 16393).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 28, 1978 at 2:45 P.M. Applicant appeared by Harold Rothman, CPA. The Audit Division appeared by Peter Crotty, Esq. (Bruce M. Zalaman, Esq., of counsel).

ISSUE

Whether applicant is liable for additional sales taxes asserted pursuant to an audit which marked up applicant's gross sales figures by 200 percent for the period December 1, 1971 through November 30, 1974.

FINDINGS OF FACT

1. During the period at issue, applicant, Kleinroth Grocery Corp., operated a small New York grocery store. The business was a failure, and in 1974, the corporation's owner, Ignatz Roth was forced to sell out in a bulk sale for \$600.00 or \$650.00.

2. Upon notification of the bulk sale, the Audit Division conducted an audit of applicant to protect the State against the running of the Statute of Limitations. The auditor made an on-site inspection of the store premises six to eight months after it had changed hands. Since applicant's records were no longer at the store, applicant's sales were estimated at three times applicant's reported sales, one half of which were deemed taxable.

3. On March 4, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant and "Ignate (sic) Roth as Officer" in the amount of \$15,001.95 plus penalty and interest of \$3,911.24 for the period December 1, 1971 through November 30, 1974.

4. Throughout the period of his ownership and control, Mr. Roth kept a cash book in which he recorded applicant's daily sales, expenses and purchases. The sales figures were derived from cash register tapes. Only cash expenditures were consistently recorded in this fashion by Mr. Roth. Check entries were occasionally made, but in a less systematic manner.

5. Mr. Roth established at the hearing that the bulk sales price for the store was either \$600.00 or \$650.00.

6. Mr. Roth established at the hearing that the store was extremely unprofitable.

7. Kleinroth Grocery Corp.'s U.S. Corporation income tax returns for 1972 recorded salary and wages as \$3,600.00 and a net business loss of \$1,276.42. The 1973 return recorded salary and wages of \$2,000.00 and a net business loss of \$1,025.40.

8. Mr. Roth established at the hearing that his personal income for the period in question was entirely consistent with the figures in Finding of Fact "7" and with the unprofitability of the store.

9. Mr. Roth established at the hearing that his impoverished condition required reliance on contributions from his working daughter to meet his family's basic living expenses.

10. Applicant's accountant reviewed the purchases made during the period December, 1971 through November, 1972 and found that nontaxable food purchases represented 70.7 percent of total purchases. He then applied the taxable sales ratio of 29.3 percent (100 - 70.7) to the total sales per cash book. This audit method resulted in a tax due of \$2,084.12.

11. Applicant had paid \$632.10 in tax with the filing of its returns.

12. Applicant and the Audit Division stipulated that tax due on the bulk sale had been paid by the purchaser.

CONCLUSIONS OF LAW

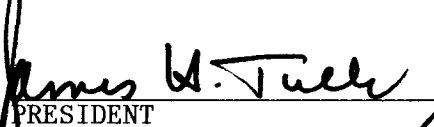
A. That applicant's sales tax due for the period December 1, 1971 through November 30, 1974 was \$2,084.12, and not as estimated by the Audit Division. Since \$632.10 had been paid by applicant, the balance owing is \$1,452.02, plus minimum statutory interest.

B. That the application of Kleinroth Grocery Corp. is granted to the extent indicated in Conclusion of Law "A". The Notice of Determination and Demand for Payment of Sales and Use Taxes Due is sustained in the amount of \$1,452.02.

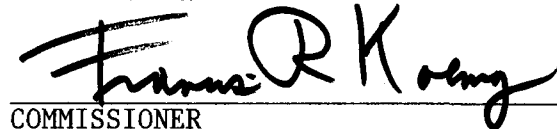
DATED: Albany, New York

JUN 6 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER