

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Nakash, Inc.

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 3/1/73 - 8/31/76. :

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 27th day of June, 1980, he served the within notice of Decision by mail upon Nakash, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

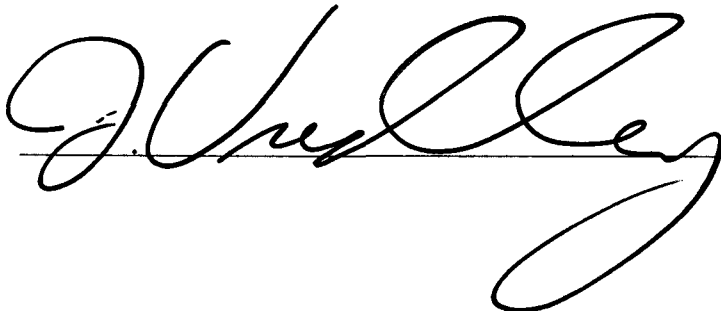
Nakash, Inc.
1351 Broadway
Brooklyn, NY 11221

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
27th day of June, 1980.

Deborah A Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Nakash, Inc.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
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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 27th day of June, 1980, he served the within notice of Decision by mail upon Helen Ampolsky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

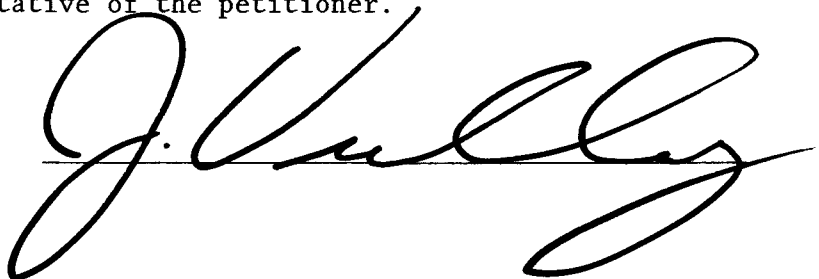
Ms. Helen Ampolsky
105-22 Flatlands 9th St.
Brooklyn, NY 11236

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
27th day of June, 1980.

Isroah A Bank



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

June 27, 1980

Nakash, Inc.
1351 Broadway
Brooklyn, NY 11221

Gentlemen:

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
Helen Ampolsky
105-22 Flatlands 9th St.
Brooklyn, NY 11236
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NAKASH, INC.	:	DECISION
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, 1973 through August 31,	:	
1976.	:	

Petitioner, Nakash, Inc., 1351 Broadway, Brooklyn, New York 11221, 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, 1973 through August 31, 1976 (File No. 18902).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1979 at 1:15 P.M. Petitioner appeared by Helen Ampolsky, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether the results of a field audit based on a markup of petitioner's purchases properly reflect its sales tax liability.

FINDINGS OF FACT

1. On January 18, 1977, as a result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Nakash, Inc. for the period March 1, 1973 through August 31, 1976 in the amount of \$11,487.11 tax plus penalties and interest.

2. Petitioner executed a consent extending the period of limitation for assessment to May 20, 1977.

3. Petitioner operated a retail clothing store. The records maintained by petitioner were not sufficient to reflect the exact amount of petitioner's tax liability; therefore, the Audit Division marked-up petitioner's taxable purchases. The taxable purchases were arrived at by deducting the cost of wholesale sales made from total purchases. The Division determined markups by comparing the selling prices of taxable items to the current purchase price. The markups were adjusted for merchandise on sale at the time the audit took place. The markups computed were 55 percent for denims and 40.5 percent for other sundry items. Denim purchases sold at retail were reduced by 1 percent as an allowance for pilferage. The application of the markups to the appropriate purchases resulted in additional taxable sales of \$148,509.00 and tax due thereon of \$11,487.11.

4. The petitioner contended that the markups computed on audit were too high and did not reflect the reduction in selling prices of damaged or outdated merchandise. Petitioner offered no documentation in support of this contention.

5. Petitioner also contended that the business suffered a greater loss through pilferage than the 1 percent allowed on audit. Petitioner contended that 8 percent was a more reasonable allowance due to the nature and location of the business.

6. During the period in issue, the petitioner sustained losses from burglaries, property damage and theft of \$15,358.77. Approximately one-half of the losses were attributable to burglaries of merchandise from petitioner's store.

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CONCLUSIONS OF LAW

A. That the allowance of 1 percent of denim purchases is adjusted to 2 percent of total purchases sold at retail to reflect the pilferage losses sustained in the petitioner's business operation.

B. That the amount of purchases marked up per audit is further reduced by \$7,680.00 to allow for burglary losses sustained in the petitioner's business operation.

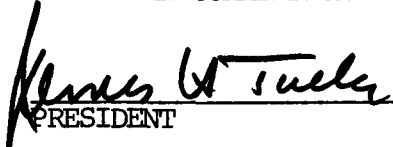
C. That except as noted in Conclusions "A" and "B" above, the audit performed by the Audit Division was proper and in accordance with section 1138(a) of the Tax Law.


D. That the petition of Nakash, Inc. is granted to the extent of Conclusions of Law "A" and "B" above; that the Audit Division is directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 18, 1977; and that, except as so granted, the petition is in all other respects denied.

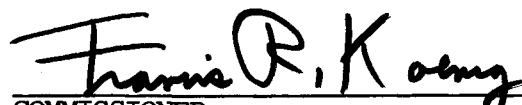
DATED: Albany, New York

JUN 27 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Nakash, Inc. :

AFFIDAVIT OF MAILING

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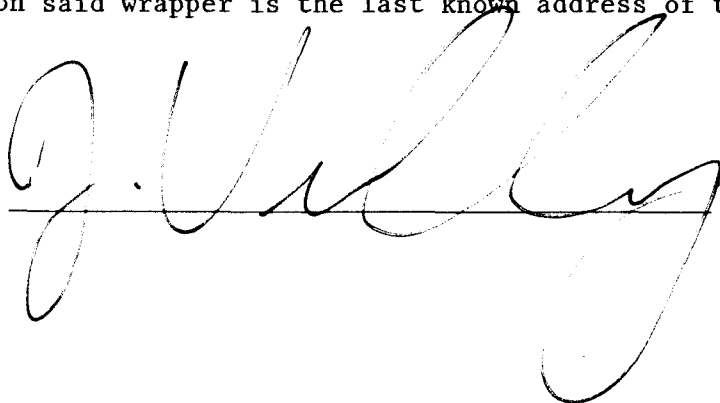
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Sworn to before me this
27th day of June, 1980.

Esther A. Bank



STATE TAX COMMISSION
TAX APPEALS BUREAU
MEMORANDUM

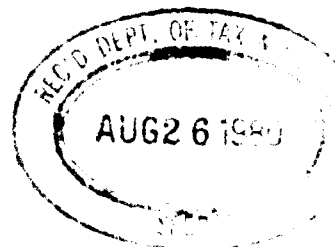
TO : Paul Coburn

FROM : John J. Sollecito, Director

SUBJECT: In the Matter of the Petition of NAKASH, INC.

Please delete page two of the above mentioned decision and insert the attached page two.

A change was made on line eight from ... current price; to ... current purchase price (emphasis added).



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