

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sweet 3, 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 12/1/72-11/30/75. :

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 Sweet 3, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sweet 3, Inc.
206B 116th St.
Rockaway, NY 11693

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 :
Sweet 3, Inc. :

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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 12/1/72-11/30/75. :

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 M. J. Schutz 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. M. J. Schutz
c/o B. Fuchs, CPA
1007 Broadway
Woodmere, 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 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.

Robbie Bank

J. Vredenburg

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

September 5, 1980

Sweet 3, Inc.
206B 116th St.
Rockaway, NY 11693

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
M. J. Schutz
c/o B. Fuchs, CPA
1007 Broadway
Woodmere, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SWEET 3, INC.	:	DECISION
for Revision of a Determination or for Re-	:	
fund of Sales and Use Taxes under Articles	:	
28 and 29 of the Tax Law for the Period	:	
December 1, 1972 through November 30, 1975.	:	

Petitioner, Sweet 3, Inc., 206B 116 Street, Rockaway, New York 11693, 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 December 1, 1972 through November 30, 1975 (File No. 17770).

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 31, 1979, at 1:15 P.M. and continued on November 27, 1979 at 9:15 A.M. Petitioner appeared by David Alster, CPA, Bernard Fuchs, CPA, and M. J. Schutz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether the audit performed by the Audit Division properly reflects petitioner's sales tax liability.

FINDINGS OF FACT

1. On December 13, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Sweet 3, Inc. for the period December 1, 1972 through November 30, 1975 in the amount of \$14,025.98 tax plus penalties and interest.

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2. Applicant executed a consent to extend the period within which to issue an assessment for the audit period to December 20, 1976.

3. On March 7, 1977, petitioner filed a timely protest to the above Notice.

4. The Audit Division based its determination on a field audit of petitioner's books and records. Petitioner operated a candy store with a soda fountain and also sold newspapers, magazines, pocketbooks, cigarettes and other sundry items. All source documents of sales records were not available at the time of audit; therefore, the Audit Division was not able to determine the exact amount of tax liability from the petitioner's records. Purchases for a test period of March 1 through May 31, 1975 were categorized and taxable purchase percentages determined. The Audit Division computed markup percentages for the taxable items sold based on a conference with petitioner. The taxable purchase percentages for each category were applied to purchases for the audit period and the appropriate markups applied thereon. An adjustment of one percent for spoilage and \$9,000.00 for employee consumption was made to food and ice cream purchases. Additional taxable sales were computed to be \$188,139.00, on which the tax of \$14,025.98 was determined due.

5. Petitioner sold bulk ice cream in containers of half-pints, pints and quarts. Approximately 75 percent of the ice cream sold was in packaging of this type. No allowance was made in the audit results for these sales.

6. The cigarette purchases marked up in the audit included book matches purchased. Based on the volume of cigarettes purchased in the audit period, a proportionate reduction of cigarette purchases is \$120.00, based on the cost of matches at \$6.00 per case.

THE UNITED STATES OF AMERICA

IN SENATE

January 10, 1917

REPORT

OF THE

COMMISSIONER OF THE GENERAL LAND OFFICE

IN RESPONSE TO A RESOLUTION OF THE SENATE

PASSED MAY 10, 1916

RELATIVE TO THE

LANDS BELONGING TO THE UNITED STATES

AND THE

LANDS BELONGING TO THE SEVERAL STATES

AND THE

LANDS BELONGING TO THE DISTRICT OF COLUMBIA

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LANDS BELONGING TO THE TERRITORIES

AND THE

7. Petitioner contended that employees consumed taxable items at the rate of \$175.00 per week and that such items should not be included in the markup computation. The only type of food sold was ice cream, donuts, rolls and coffee. During the audit period, petitioner had either 5 or 6 employees.

8. Petitioner contended that breakfast specials were offered to senior citizens at a reduced price and that taxable magazines were sold at a discount when they became outdated. Petitioner offered no evidence to support its contentions or to show what effect these specials and discounts had on the audit results.

9. Petitioner contended that at least one burglary occurred each year in the audit period and merchandise was stolen. Petitioner presented no documentary evidence of such losses.

10. The audit results did not allow for pilferage. Losses of inventory were sustained through pilferage in the amount of approximately \$35.00 per week.

CONCLUSIONS OF LAW

A. That the Audit Division failed to give proper consideration to petitioner's business operation in that ice cream sold in bulk amounted to 75 percent of the ice cream sales and is exempt under section 1115(a) (1) of the Tax Law, cigarette purchases marked up in the audit included \$120.00 of book matches, and pilferage sustained amounted to \$5,460.00 in taxable items for the audit period. That the purchases are therefore adjusted for these items.

B. That except as noted in Conclusion of Law "A" above, the audit performed by the Audit Division was proper and in accordance with section 1138(a) of the Tax Law in that records maintained by petitioner did not show the exact amount of its tax liability.

1. The Commission has been informed that the Government of the United States has been requested to provide information regarding the activities of the United States in the field of human rights. The Commission has been informed that the Government of the United States has been requested to provide information regarding the activities of the United States in the field of human rights.

C. That the petition of Sweet 3, Inc. is granted to the extent indicated in Conclusion "A" above; that the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 13, 1976; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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SEP 02 1990