

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Winicki Brothers, 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 6/1/73 - 5/31/76. :

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 6th day of August, 1980, he served the within notice of Decision by mail upon Winicki Brothers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

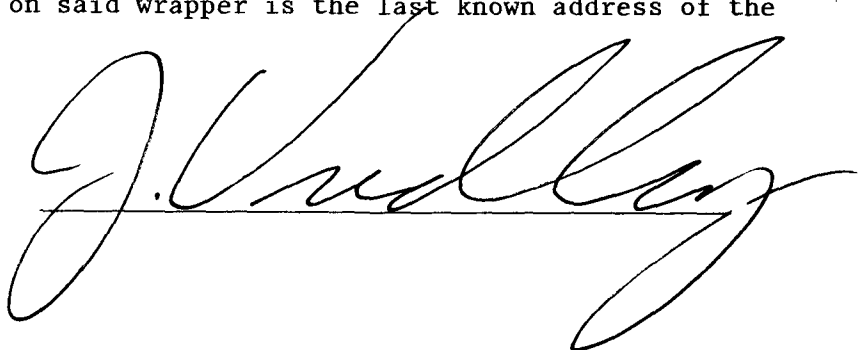
Winicki Brothers, Inc.  
242 Newbridge Ave.  
E. Meadow, NY 11779

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 August, 1980.

Robert A. Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
Winicki Brothers, 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 6/1/73 - 5/31/76. :

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 6th day of August, 1980, he served the within notice of Decision by mail upon Paul R. Gaynes 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. Paul R. Gaynes  
Berkal & Gaynes, CPA's  
88 Sunnyside Blvd.  
Plainview, NY 11803

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 August, 1980.

Dorothy A. Bank

J. Vredenburg

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

August 6, 1980

Winicki Brothers, Inc.  
242 Newbridge Ave.  
E. Meadow, NY 11779

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  
Paul R. Gaynes  
Berkal & Gaynes, CPA's  
88 Sunnyside Blvd.  
Plainview, NY 11803  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
WINICKI BROS., 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 June 1, 1973 through May 31,	:	
1976.	:	

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Petitioner, Winicki Bros., Inc., 408 Rosevale Avenue, Ronkonkoma, New York 11779, 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 June 1, 1973 through May 31, 1976 (File No. 21232).

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 November 1, 1979 at 2:45 P.M. Petitioner appeared by Paul R. Gaynes, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUE

Whether the markups computed by the Audit Division and applied to petitioner's taxable purchases properly reflected its taxable sales.

FINDINGS OF FACT

1. On December 9, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Winicki Bros., Inc. for the period June 1, 1973 through May 31, 1976 in the amount of \$3,455.07 tax plus penalties and interest.

2. The above notice, which was issued as a result of a field audit, was protested by the petitioner on January 12, 1978.

3. Petitioner executed consents extending the time within which to issue an assessment of sales and use taxes for the period June 1, 1973 through February 29, 1976 to December 20, 1977.

4. Petitioner operated a supermarket during the period in issue. Petitioner's sales records was inadequate to determine the exact amount of its sales tax liability; therefore, the Audit Division performed a markup test. In its performance of the audit, the Audit Division examined purchase invoices for the months of January, April, August, and November, 1975 to determine a taxable ratio of purchases. Taxable purchases were found to be 34.28 percent of the total. The taxable purchases were further broken down into categories and weighted markups computed for each by using current purchase costs and current selling prices. Any specials offered at the time of audit were assigned the lower sale prices. The appropriate markups were applied to the taxable purchases categorized and the result was compared to the taxable sales reported. An error rate of 10.09 percent was found on taxable sales reported. The Audit Division determined that additional tax of \$3,455.07 was due on additional taxable sales of \$49,358.00.

5. Petitioner contended that the proper weight was not given in the markup test for taxable items sold at cost or below. It stated that the turnover of sale items was much greater than the sale of regular priced items. The petitioner failed to introduce any evidence to show that the volume of purchases of items sold at cost or less was any greater throughout the audit period than during the period in which the markup test was performed.

#### CONCLUSIONS OF LAW

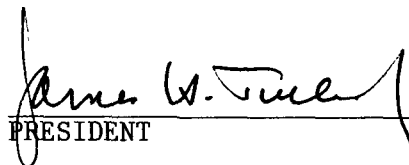
A. That the audit performed by the Audit Division was proper and in accordance with section 1138(a) of the Tax Law in that techniques used were consistent with audit procedure, the test period used was sufficient and the

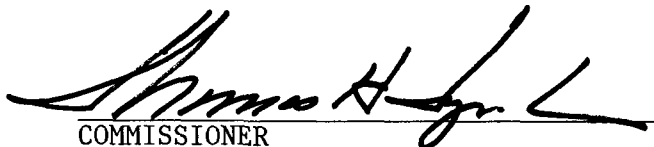
audit results were substantiated by documentation.

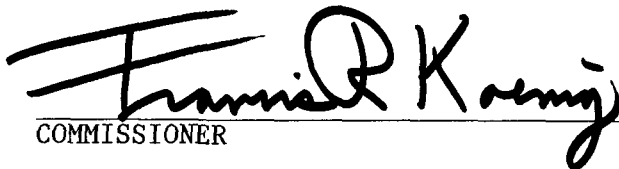
B. That the petition of Winicki Bros., Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 9, 1977 is sustained.

DATED: Albany, New York  
AUG 06 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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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 5th day of September, 1980, he served the within notice of Decision by mail upon Winicki Brothers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Winicki Brothers, Inc.  
408 Rosevale Ave.  
Ronkonkoma, NY 11779

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.

Norah A Bank

J. Vredenburg

TA 26 (9-79)

STATE OF NEW YORK

~~State~~ Tax Commission

~~TAX~~ APPEALS BUREAU

~~STATE~~ CAMPUS

ALBANY, N. Y. 12227

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Winicki Brothers, Inc.  
242 Newbridge Ave.  
E. Meadow, NY ~~11779~~

11554

*Ex-140*  
*W.B.F.*

*remailed  
9/15/80*

