

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ali Ahmad, Ahmed Ahmad & Yahya Ahmad :
d/b/a A & A Grocery Store :
: 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 3/1/74 - 5/31/74 & 9/1/74 - 8/31/77. :

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 19th day of June, 1981, he served the within notice of Decision by mail upon Ali Ahmad, Ahmed Ahmad & Yahya Ahmad, d/b/a A & A Grocery Store, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ali Ahmad, Ahmed Ahmad & Yahya Ahmad
d/b/a A & A Grocery Store
1677 Nostrand 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
19th day of June, 1981.

Annice A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ali Ahmad, Ahmed Ahmad & Yahya Ahmad :
d/b/a A & A Grocery Store :
: 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 3/1/74 - 5/31/74 & 9/1/74 - 8/31/77. :

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 19th day of June, 1981, he served the within notice of Decision by mail upon Bertle L. Graham 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. Bertle L. Graham
908 Linden Blvd.
Brooklyn, NY 11203

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
19th day of June, 1981.

Annie A. Haglund

J. Vredenburg

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

June 19, 1981

Ali Ahmad, Ahmed Ahmad & Yahya Ahmad
d/b/a A & A Grocery Store
1677 Nostrand Ave.
Brooklyn, NY 11226

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
Bertle L. Graham
908 Linden Blvd.
Brooklyn, NY 11203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALI AHMAD, AHMED AHMAD	:	
and	:	DECISION
YAHYA AHMAD	:	
d/b/a A & A GROCERY STORE	:	
for Revision of a Determination or	:	
for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax	:	
Law for the Periods March 1, 1974	:	
through May 31, 1974 and September 1,	:	
1974 through August 31, 1977.	:	

Petitioners, Ali Ahmad, Ahmed Ahmad and Yahya Ahmad d/b/a A & A Grocery Store, 1677 Nostrand Avenue, Brooklyn, New York 11226, 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 periods March 1, 1974 through May 31, 1974 and September 1, 1974 through August 31, 1977 (File No. 21768).

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 May 13, 1980 at 9:15 A.M. Petitioners appeared by Bertie Graham, Accountant. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the result of a field audit using one month's purchase invoices was indicative of petitioners' sales for the entire audit period.

FINDINGS OF FACT

1. On February 15, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against A & A Grocery Store for the periods March 1, 1974 through May 31, 1974 and September 1, 1974 through August 31, 1977. The Notice was issued in the amount of \$14,042.70 tax, plus penalties and interest, as a result of a field audit.

2. Petitioners executed a consent extending the period of limitation for assessment for the period September 1, 1974 through November 30, 1974 to December 20, 1978. Petitioners filed no sales and use tax return for the period March 1, 1974 through May 31, 1974.

3. On audit, the Audit Division found that petitioners maintained no records; therefore, it requested that purchase invoices be kept for the month of December, 1977.

Upon review of the December, 1977 purchase invoices, the Audit Division found that 33.15 percent of these purchases were taxable when resold. The Division then segregated the taxable purchases into categories and determined the following markups based on cost and current shelf prices:

General Taxables	56.65%
Soda	40.28%
Beer	31.62%
Candy	41.05%
Cigarettes	24.14%

Total purchases made during December, 1977 of \$10,963.03 were multiplied by the number of months in the audit period (39) to determine the total purchases for the audit period. These purchases were then segregated by their respective taxable percentage and the appropriate markups applied thereon. The Audit Division made an allowance of \$770.00 in taxable purchases that were withdrawn for personal use and not sold.

The Audit Division determined total taxable sales for the audit period of \$181,874.00 and tax due thereon of \$14,409.70. Tax due of \$748.00 on fixed assets was also determined. Petitioners reported tax of \$1,115.00 on its sales and use tax returns filed, and the difference of \$14,042.70 was held due.

4. Petitioners did not collect sales tax on the sales they made. Petitioners estimated taxable sales when preparing their sales tax returns.

5. Petitioners contended that the taxable purchases made during the December, 1977 test period were greater than normal due to specials offered by distributors. They contended that these purchases were not sold out until three to seven months later. Further, petitioners argued that the taxable ratio of purchases was much lower in the beginning years of operation than the one month used on audit. No evidence was offered to substantiate these contentions.

6. Petitioners submitted U.S. Partnership Returns for the years 1975 and 1976. Gross sales on these returns were estimated based on sales ranging from one day to one week. Purchases on these returns were also estimated.

7. Petitioners' business commenced in April, 1974. Inventory on hand at the end of 1976 was \$10,440.00, of which \$3,471.30 was taxable when resold.

8. Petitioners offered no evidence to show that the lack of record keeping was not due to willful neglect.

CONCLUSIONS OF LAW

A. That the Audit Division did not give proper consideration to the fact that petitioners made no sales during March, 1974 since they did not commence their business activity until April, 1974, and that petitioners had inventory on hand that was not sold. That the purchases marked-up on audit are reduced by those allocated to March, 1974 and by \$3,471.30, which represents

the taxable inventory on hand as found in Finding of Fact "7".

B. That except as noted in Conclusion "A" above, the audit performed was proper and in accordance with the provisions of section 1138(a) of the Tax Law. Petitioners failed to show the determination was in error. Further, exactness is not required where it is the taxpayer's own failure to maintain proper records which prevents exactness in the determination of sales tax liability (Matter of Markowitz v. State Tax Commission, 54 A.D.2d 1023, aff'd 44 N.Y.2d 684).

C. That the petition of Ali Ahmad, Ahmed Ahmad and Yahya Ahmad d/b/a A & A Grocery Store is granted to the extent indicated in Conclusion "A" above; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 15, 1978 together with full penalties and interest thereon; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER