

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Terence Balcolm :  
and Randolph Balcolm :  
: 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 3/1/75-2/28/78. :

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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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Terence Balcolm and Randolph Balcolm the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Terence Balcolm  
and Randolph Balcolm  
1037 Webster St.  
Schenectady, 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 November, 1981.

*Annice G. Hagerman*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Terence Balcolm :  
and Randolph Balcolm :

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 3/1/75-2/28/78.

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 November, 1981, he served the within notice of Decision by certified mail upon Alan L. Gebell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan L. Gebell  
Pemberton, Buchyn & O'Hare  
701 Union St.  
Schenectady, NY 12305

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 November, 1981.

*Charles A. Hayward*

*J. Vredenburg*

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

November 6, 1981

Terence Balcolm  
and Randolph Balcolm  
1037 Webster St.  
Schenectady, NY

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  
Alan L. Gebell  
Pemberton, Buchyn & O'Hare  
701 Union St.  
Schenectady, NY 12305  
Taxing Bureau's Representative

## STATE TAX COMMISSION

## DECISION

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on October 6, 1980 at 2:45 P.M. Petitioners appeared by Alan L. Gebell, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

Whether the sales tax asserted against petitioners under section 1141(c) of the Tax Law is due upon failure of the seller(s) to pay the additional tax assessed.

1. On April 20, 1978, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioners Terence Balcolm and Randolph Balcolm for the period March 1, 1975 through February 28, 1978. The Notice was issued in the estimated amount of \$1,636.49 tax plus penalties and

interest which represented petitioners' liability under section 1141(c) of the Tax Law.

2. On February 1, 1978, petitioners purchased a business known as J & K Groceries from Joseph W. Hughes, Jr. and Karen L. Hughes. Petitioners filed a Notification of Sale, Transfer or Assignment in Bulk dated February 1, 1978, which was received by the Audit Division on February 9, 1978.

3. Subsequent to the purchase of the business by petitioners, a field audit was performed by the Audit Division on the sellers' books and records. On audit, it was found that the business was purchased by Joseph W. Hughes, Jr. and Karen L. Hughes on February 1, 1977 from William P. Gizzi d/b/a Grant's Grocery Store. A notification of sale was not filed on this transaction; therefore, the audit consisted of two phases.

First, the Audit Division examined the books and records of Joseph W. Hughes, Jr. and Karen L. Hughes d/b/a J & K Groceries for the period February 1, 1977 through January 31, 1978. It determined an additional tax liability of \$451.97 which was agreed to and paid by the Hugheses.

The Audit Division then examined the books and records of William P. Gizzi d/b/a Grant's Grocery Store for the period March 1, 1975 through January 31, 1977. The Audit Division determined additional tax due of \$1,361.18 which was agreed to by Mr. Gizzi and a consent to fixing of tax was signed by him on October 31, 1978. The additional tax due, however, was not remitted.

4. On January 17, 1979, the Audit Division reduced the amount of additional tax due asserted against petitioners to \$1,076.54. It was the Audit Division's position that the tax due from William P. Gizzi was the liability of John W. and Karen L. Hughes and in turn the liability of the petitioners under section 1141(c) of the Tax Law. The amount of tax due asserted against the

petitioners was in error in their favor; however, the Audit Division conceded that no increase should be made.

5. Petitioners contended that since they did not operate the business during the period in issue, no tax was due from them and that the tax should have been collected from the previous owners of the business. Petitioners further argued that the requirements of section 1141(c) were met by their notifying the Audit Division of the purchase, thereby relieving them of any liability.

#### CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law states in summary that whenever a person required to collect tax shall make a sale of his business assets, otherwise than in the ordinary course of business, the purchaser shall at least ten days before taking possession notify the tax commission by registered mail of the proposed sale. Whenever the purchaser shall fail to give notice as required or whenever the tax commission shall inform the purchaser that a possible claim for tax exists, any sums of money shall be subject to a first priority right and lien for any such taxes due from the seller. Within ninety days of receipt of the notice of the sale from the purchaser, the Tax Commission shall give notice to the purchaser and to the seller of the total amount of any tax which the State claims to be due from the seller to the State.

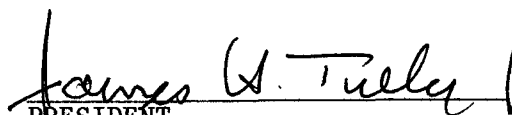
B. That the Tax Commission notified the purchasers of the total amount of taxes which the State claimed to be due from the seller within 90 days of the receipt of the notification of sale. Accordingly, petitioners are personally liable under section 1141(c) of the Tax Law for the taxes of the seller(s) until such taxes are paid.

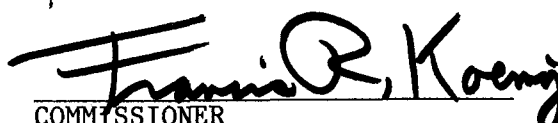
C. That the petition of Terence Balcolm and Randolph Balcolm is denied and the Notice and Demand for Payment of Sales and Use Taxes Due as revised on January 17, 1979 is sustained.

DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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

November 6, 1981

Terence Balcolm  
and Randolph Balcolm  
1037 Webster St.  
Schenectady, NY

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  
Alan L. Gebell  
Pemberton, Buchyn & O'Hare  
701 Union St.  
Schenectady, NY 12305  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
TERENCE BALCOLM and RANDOLPH BALCOLM	:	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, 1975	:	
through February 28, 1978.	:	

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Petitioners, Terence Balcolm and Randolph Balcolm, 1037 Webster Street, Schenectady, New York, 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, 1975 through February 28, 1978 (File No. 24862).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on October 6, 1980 at 2:45 P.M. Petitioners appeared by Alan L. Gebell, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether the sales tax asserted against petitioners under section 1141(c) of the Tax Law is due upon failure of the seller(s) to pay the additional tax assessed.

FINDINGS OF FACT

1. On April 20, 1978, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioners Terence Balcolm and Randolph Balcolm for the period March 1, 1975 through February 28, 1978. The Notice was issued in the estimated amount of \$1,636.49 tax plus penalties and

interest which represented petitioners' liability under section 1141(c) of the Tax Law.

2. On February 1, 1978, petitioners purchased a business known as J & K Groceries from Joseph W. Hughes, Jr. and Karen L. Hughes. Petitioners filed a Notification of Sale, Transfer or Assignment in Bulk dated February 1, 1978, which was received by the Audit Division on February 9, 1978.

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#### CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law states in summary that whenever a person required to collect tax shall make a sale of his business assets, otherwise than in the ordinary course of business, the purchaser shall at least ten days before taking possession notify the tax commission by registered mail of the proposed sale. Whenever the purchaser shall fail to give notice as required or whenever the tax commission shall inform the purchaser that a possible claim for tax exists, any sums of money shall be subject to a first priority right and lien for any such taxes due from the seller. Within ninety days of receipt of the notice of the sale from the purchaser, the Tax Commission shall give notice to the purchaser and to the seller of the total amount of any tax which the State claims to be due from the seller to the State.

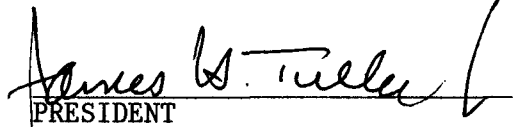
B. That the Tax Commission notified the purchasers of the total amount of taxes which the State claimed to be due from the seller within 90 days of the receipt of the notification of sale. Accordingly, petitioners are personally liable under section 1141(c) of the Tax Law for the taxes of the seller(s) until such taxes are paid.

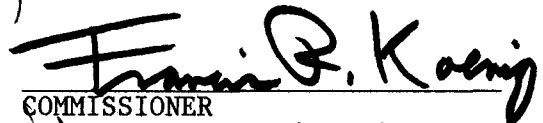
C. That the petition of Terence Balcolm and Randolph Balcolm is denied and the Notice and Demand for Payment of Sales and Use Taxes Due as revised on January 17, 1979 is sustained.

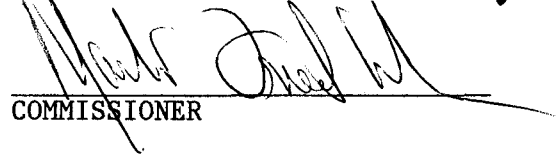
DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION

  
PRESIDENT

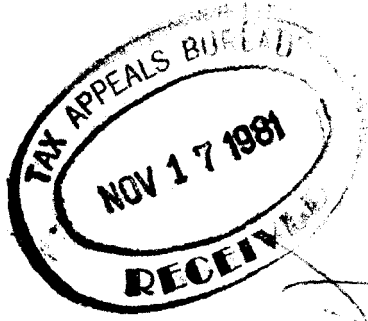
  
COMMISSIONER

  
COMMISSIONER

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STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

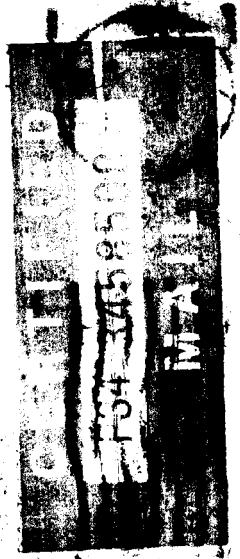
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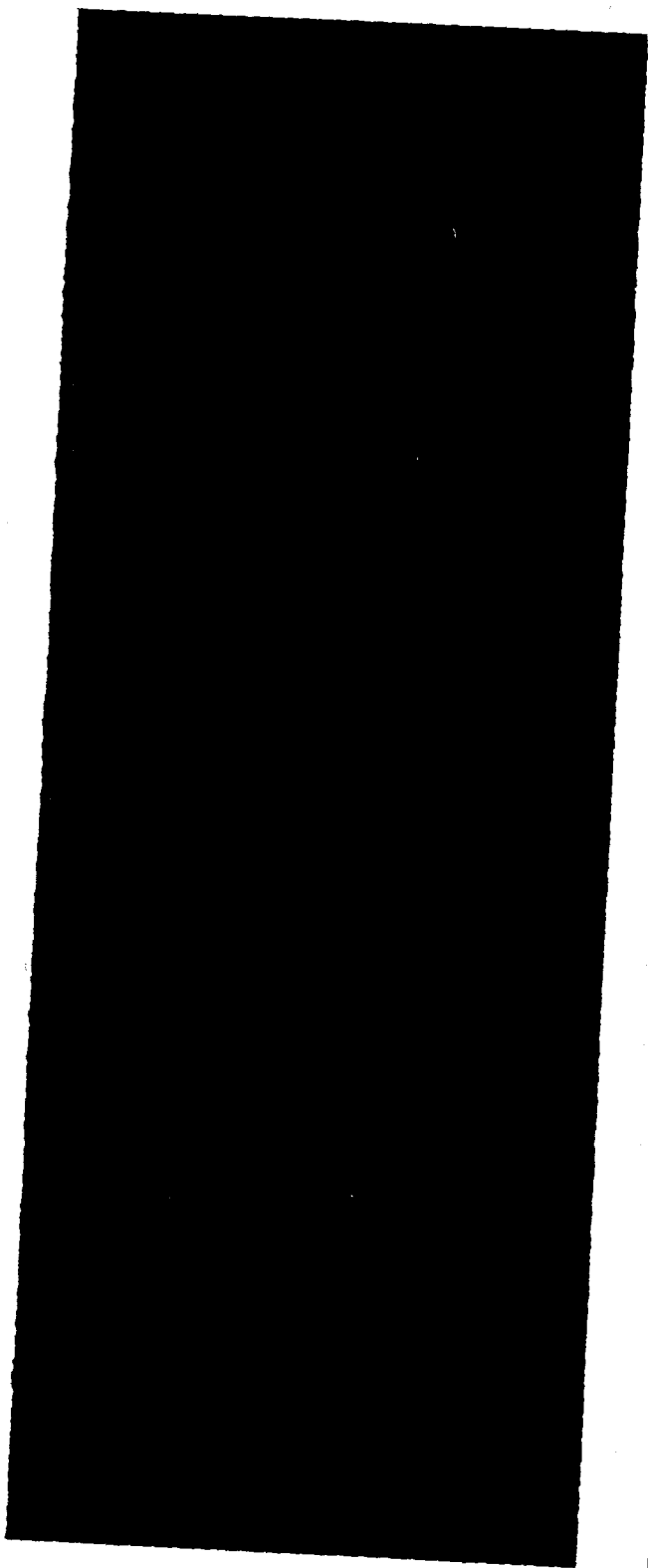


Terence Balcolm  
and Randolph Balcolm  
1037 Webster St.  
Schenectady, NY

301

8/11/81





REQUEST FOR BETTER ADDRESS

Requested by <i>Dec</i> <i>Dean Schutt</i>	Unit <i>Calendar</i>	Date of Request <i>11/19/81</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>N.Y. 801 3489</i>	Date of Petition <i>79/03/09</i> <i>147-48-2645</i>
Name <i>Jerence Balcolm and Randolph Balcolm</i>	
Address <i>1037 Webster St Schenectady N.Y.</i>	

## Results of search by Files

<input type="checkbox"/> New address:	
<input checked="" type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by <i>SL</i>	Section <i>MI</i>	Date of Search <i>12-20-81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER