

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

October 2, 1981

Civic Center Pharmacy, Inc., Joel E. Belle
& Stephen D. Greenfield, Ind. & as Off.
114 Shubhollow Rd.
Roslyn, NY 11576

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
Stuart J. Stein
600 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

TA 26 (9-79)

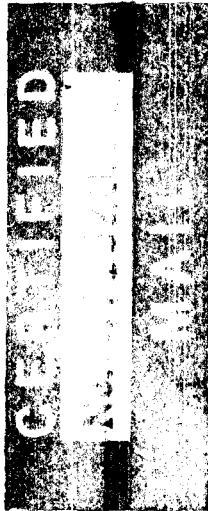
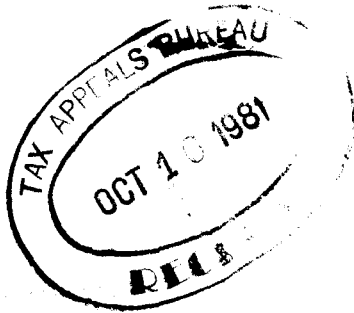
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227

File

Returned for
Correspondence

Civic Center Pharmacy, Inc., Joel E. Belle
& Stephen D. Greenfield, Ind. & as Off.
114 Shubhollow Rd.
Rosllyn, NY 11576



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions

of

CIVIC CENTER PHARMACY, INC.
JOEL E. BELLE and STEPHEN D. GREENFIELD :
Individually and as Officers

DECISION

for Revision of Determinations or for
Refund of Sales and Use Taxes under
Articles 28 and 29 of the Tax Law for
the Period December 1, 1973 through
November 30, 1976.

Petitioners, Civic Center Pharmacy, Inc., formerly at 262 Canal Street, New York, New York 10013, Joel E. Belle, individually and as officer, 114 Shrubhollow Road, Roslyn, New York 11576 and Stephen D. Greenfield, individually and as officer, 9 Heathcote Drive, Albertson, New York 11507, filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1973 through November 30, 1976 (File Nos. 22110, 22111 and 22979).

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 June 16, 1980 at 1:15 P.M. Petitioners, Civic Center Pharmacy, Inc. and Joel E. Belle appeared by Stuart J. Stein, Esq. Petitioner Stephen D. Greenfield appeared by Gary Koenig, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the result of a field audit performed by the Audit Division properly reflected petitioners' sales tax liability.

II. Whether petitioner Stephen D. Greenfield was a responsible officer for the entire audit period.

FINDINGS OF FACT

1. On February 14, 1978, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioners, Civic Center Pharmacy, Inc. and Joel E. Belle and Stephen D. Greenfield, individually and as officers, for the period December 1, 1973 through November 30, 1976. The notices were issued subsequent to a field audit resulting in additional tax due of \$21,237.73 plus penalty and interest.

2. Petitioner Civic Center Pharmacy, Inc., by signature of Joel E. Belle, executed consents extending the period of limitation for assessment to December 20, 1978.

3. On audit, the Audit Division analyzed purchases for the months of October and December, 1975 and February, April, June and August, 1976. It determined that taxable purchases were made in accordance with the following ratios:

<u>Category of Purchases</u>	<u>Purchase Ratio</u>
Sundries (general taxable)	18.92%
Perfume and Cosmetics	7.94%
Photo (film processing)	5.81%
Tobacco (cigarettes)	13.75%
Candy	4.10%
Film	.56%
Total Taxable	51.08%

The Audit Division then randomly selected taxable merchandise from the store shelves and determined the following average markups using current costs and selling prices:

<u>Category</u>	<u>Mark Up</u>
Sundries (general taxable)	36.30%
Perfume and Cosmetics	33.09%
Photo (film processing)	50.00%
Tobacco (cigarettes)	21.63%
Candy	56.68%
Film	18.06%

The application of the above markups to the taxable purchases categorized for the audit period resulted in taxable sales of \$891,809.70. Petitioner reported taxable sales of \$618,553.00. The Audit Division thereby determined additional taxable sales of \$273,256.70 and tax due thereon of \$21,237.73. Petitioner's records were insufficient for the verification of the exact amount of its taxable sales.

4. Petitioners argued that the markup applied on audit to sundry items did not accurately reflect those sales in that leader items, (items which are sold at a low markup or no markup at all) were sold in greater volume and were not included in the markup test. Petitioner submitted a worksheet of leader items sold with appropriate costs and selling prices. The combined markup on sundry items including leader items sold was 24.9 percent.

5. Petitioner incurred losses from film left for processing which was never picked up by its customers. Losses constituted 5 percent of its film processing costs.

6. In order to maintain minimum purchase requirements by perfume and cosmetic manufacturers, petitioner resold a portion of the purchases to "jobbers". Invoices for perfumes and cosmetics totaling \$6,145.61 were submitted to show resale to "jobbers" at cost. No resale certificates, however, were submitted to show that these sales were not taxable.

7. Petitioner sustained losses through pilferage and breakage of sundry items, perfumes and cosmetics, film, candy and tobacco. Such losses were incurred at the rate of 5 percent of purchases.

8. Petitioner contended that the selling prices of candy and film processing were discounted by 20 percent from selling prices used by the Audit Division in its markup tests. They also contended that the markup on cigarettes was only 2 percent. No evidence was submitted to show that the selling prices used by the Audit Division were not correct nor was there any evidence to show that other records were available for audit.

9. Petitioner Stephen D. Greenfield resigned his position as treasurer of Civic Center Pharmacy, Inc. on March 8, 1976. No evidence was submitted to show that he was not a responsible officer prior to his resignation.

CONCLUSIONS OF LAW

A. That the Audit Division did not give proper consideration to leader items sold in the result of its markup test on sundry items. The markup applied to sundries is reduced to 24.9 percent pursuant to Finding of Fact "4". The audit also failed to consider that 5 percent of petitioner's purchases were not sold due to pilferage, breakage and other factors as indicated in Findings of Fact "5" and "7". The amount of purchases sold at retail are thereby reduced 5 percent to reflect the occurrence of such losses.

B. That the sales of perfume and cosmetics made by petitioner to "jobbers" were sales subject to the tax in the absence of any resale certificates as provided by section 1132(a) of the Tax Law. Purchases of perfume and cosmetics amounting to \$6,145.61 were not marked up to retail but rather were sold at cost. Accordingly, the purchases marked-up on audit are to be adjusted to reflect this transaction.

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

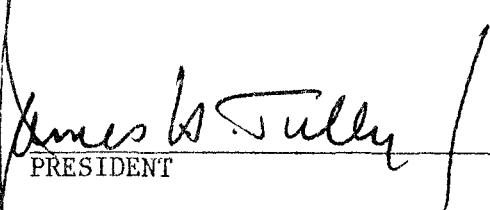
D. That Stephen D. Greenfield was a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law through March 8, 1976 and, therefore, liable for the tax under the provisions of section 1133(a) of the Tax Law through said date.

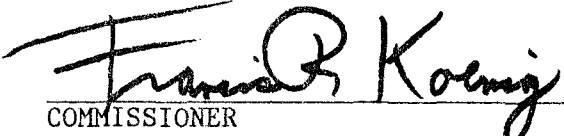
E. That the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued on February 14, 1978 against Civic Center Pharmacy, Inc., Joel E. Belle and Stephen D. Greenfield, individually and as officers in accordance with Conclusions "A" and "B" above; and that the Audit Division is directed to further modify the Notice issued to Stephen D. Greenfield in accordance with Conclusion "D" above. That, except as so granted, the petitions are in all other respects denied.

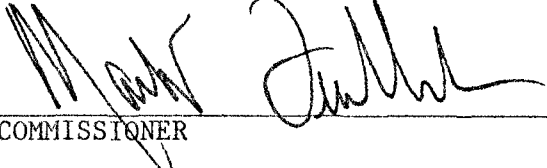
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by <i>J. Hederling</i>	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request <i>10-16-81</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>N.L.</i>	Date of Petition <i>78-09-24</i>
Name <i>Civic Center Pharmacy, Inc., Joel E. Belle & Stephen D. Greenfield, Ind. as Officers.</i>	
Address <i>114 - Shubhollow Road Roslyn, N.Y. 11576</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>0-29-81 Stephen Greenfield</i>

Searched by <i>P. Kaya</i>	Section <i>Master Index</i>	Date of Search <i>10-29-81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER