

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Holy City Supermarket, Inc. :
and Ismail Ali Hosain, Ind. & as an Officer :
: 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
9/1/73-2/28/77.

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Holy City Supermarket, Inc. and Ismail Ali Hosain, Ind. & as an Officer the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

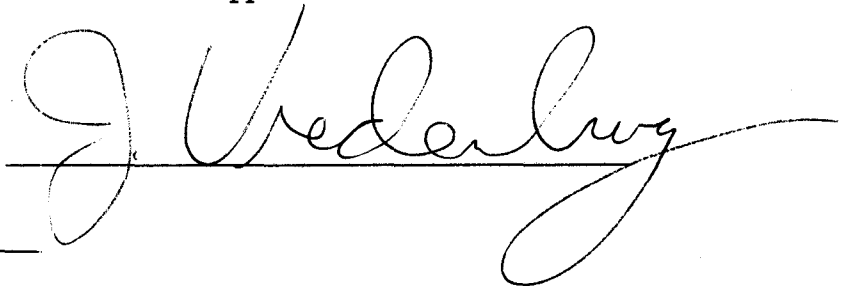
Holy City Supermarket, Inc.
and Ismail Ali Hosain, Ind. & as an Officer
3815 Third Ave.
Bronx, NY 10457

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
23rd day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Holy City Supermarket, Inc. :
and Ismail Ali Hosain, Ind. & as an Officer : AFFIDAVIT OF MAILING
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of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 9/1/73-2/28/77. :

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 23rd day of October, 1981, he served the within notice of Decision by certified mail upon David R. Portlock the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

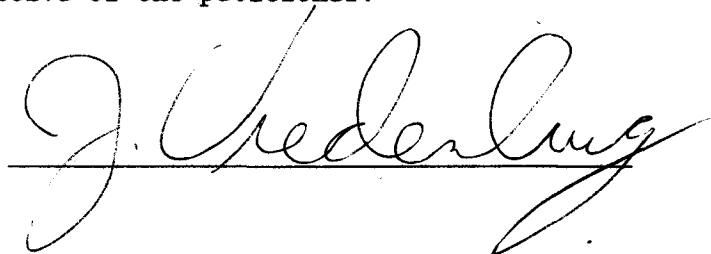
David R. Portlock
104-70 Queens Blvd.
Forest Hills, NY

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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
23rd day of October, 1981.





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

October 23, 1981

Holy City Supermarket, Inc.
and Ismail Ali Hosain, Ind. & as an Officer
3815 Third Ave.
Bronx, NY 10457

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
David R. Portlock
104-70 Queens Blvd.
Forest Hills, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HOLY CITY SUPERMARKET, INC. : DECISION
and :
ISMAIL ALI HOSAIN, :
Individually and as an Officer :
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 September 1, :
1973 through February 28, 1977. :

Petitioners, Holy City Supermarket, Inc., 3815 Third Avenue, Bronx, New York and Ismail Ali Hosain, 229 North Street, Fairview, 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 September 1, 1973 through February 28, 1977 (File No. 20528).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 24, 1981. Petitioner appeared by David R. Portlock. The Audit Division appeared by Ralph J. Vecchio, Esq., (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the Audit Division's determination of additional tax due from petitioner Holy City Supermarket, Inc. was proper and correct.

FINDINGS OF FACT

1. Petitioner Holy City Supermarket, Inc. is a supermarket located on Third Avenue in the Bronx, New York. The corporation was formed in 1973. One of its founders and an officer is petitioner Ismail Ali Hosain.

2. On September 15, 1977, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioners Holy City Supermarket, Inc. and Ismail Hosain, individually and as an officer, for additional sales tax of \$46,854.00 plus penalty and interest of \$21,412.57 for the period September 1, 1973 through February 28, 1977.

3. The aforementioned notice was timely issued pursuant to a signed consent extending the period of limitation for assessment of sales and use taxes to and including November 30, 1977.

4. Petitioners by letter of October 3, 1977 requested a hearing to review the notice.

5. On audit, petitioner Holy City Supermarket, Inc. failed to produce for the examining auditor any books. The auditor had for examination a corporate Federal income tax return for 1976 plus purchase invoices for the months of February and July of 1976, and March and April of 1977. The audit was made by projecting the purchases shown on the income tax return to determine the purchases for the audit period. The February and July, 1976 purchase invoices were analyzed to find a percentage that would be subject to tax upon sale (21.2 percent). This was applied to the projected purchases to arrive at the taxable purchases. Current sales prices were compared to cost as shown on the March and April, 1977 invoices to determine a mark-up (134.27 percent). That was applied to the taxable purchases as determined above to arrive at the taxable sales. Credit for taxable sales reported on tax returns was then given. The audit technique used resulted in additional taxable sales of \$600,146.29 and sales tax due of \$46,854.00.

6. At the hearing, petitioners presented a diary which was described as being a sales journal for the year 1974. Entries were shown of daily totals for groceries, meals, dairy, frozen food and produce sales. Figures were given for sales taxes collected. No separate entries are given for taxable and nontaxable items. There were days when entries were not made for each of the three cash registers on the premises. No cash register tapes to support the entries were presented.

7. Petitioners contended that its markup was low due to the presence of five other supermarkets in the area. Testimony was given that the supermarket suffered numerous robberies and fires and also a flood. Petitioners offered no substantial evidence to support the contentions.

8. Petitioner Holy City Supermarket, Inc. filed New York State and local sales and use tax returns which indicated for the three and one-half year audit period gross sales of \$860,871.00, taxable sales of \$104,780.00 and sales tax due of \$8,149.70. By petitioners' own admission the sales and use tax returns understated taxable sales. More than half the returns were late filed.

9. The records of petitioner Holy City Supermarket, Inc. were inadequate for the Audit Division to determine the exact amount of its tax liability.

10. Reasonable cause does not exist for the abatement of penalty and interest.

CONCLUSIONS OF LAW

A. That the Audit Division's determination of additional taxes due was determined "from such information as may be available", in accordance with the meaning and intent of section 1138(a) of the Tax Law.

B. That the petition of Holy City Supermarket, Inc. and Ismail Ali Hosain in denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 15, 1977 is sustained.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION

James W. Tulla
PRESIDENT

Francis Q. Koenig
COMMISSIONER

Mark J. [unclear]
COMMISSIONER

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

Remailed
DEC 30 1981

~~October 23, 1981~~

Holy City Supermarket, Inc.
and Ismail Ali Hosain, Ind. & as an Officer
3815 Third Ave.
Bronx, NY 10457

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

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NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

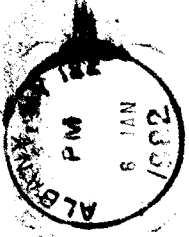
Very truly yours,

STATE TAX COMMISSION

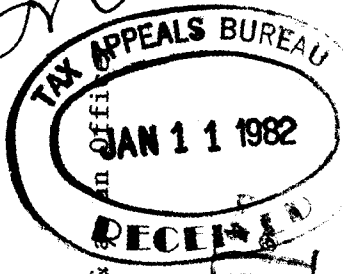
cc: Petitioner's Representative
David R. Portlock
104-70 Queens Blvd.
Forest Hills, NY
Taxing Bureau's Representative

TA 26 (9-79)

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



Remailed



Holy City Supermarket, Inc.
and Ismail Ali Hosain, Ind. &
536 Fifth Ave.
Brooklyn, NY



RETURNED TO SENDER
NO SUCH NUMBER
DO NOT REMAIL
IN THIS ENVELOPE

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

HOLY CITY SUPERMARKET, INC. :

and :

ISMAIL ALI HOSAIN, :

Individually and as an Officer :

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 September 1,
1973 through February 28, 1977. :

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FINDINGS OF FACT

1. Petitioner Holy City Supermarket, Inc. is a supermarket located on Third Avenue in the Bronx, New York. The corporation was formed in 1973. One of its founders and an officer is petitioner Ismail Ali Hosain.

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9. The records of petitioner Holy City Supermarket, Inc. were inadequate for the Audit Division to determine the exact amount of its tax liability.

10. Reasonable cause does not exist for the abatement of penalty and interest.

CONCLUSIONS OF LAW

A. That the Audit Division's determination of additional taxes due was determined "from such information as may be available", in accordance with the meaning and intent of section 1138(a) of the Tax Law.

B. That the petition of Holy City Supermarket, Inc. and Ismail Ali Hosain in denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 15, 1977 is sustained.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION

James W. Tulla
PRESIDENT

Francis Q. Koenig
COMMISSIONER

Mark J. [unclear]
COMMISSIONER

STATE OF NEW YORK

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State of New York
County of Albany

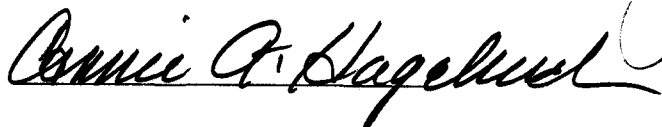
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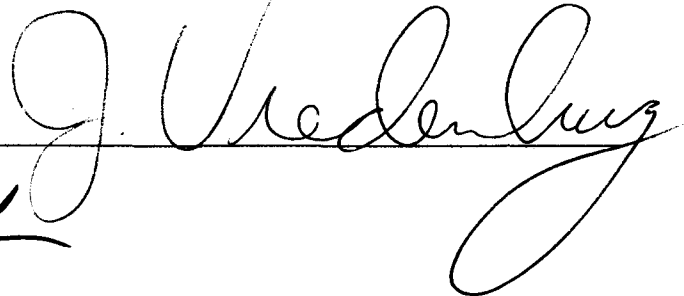
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Sworn to before me this
30th day of December, 1981.

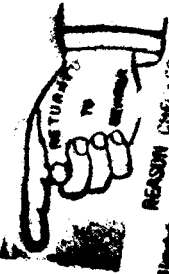




TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227



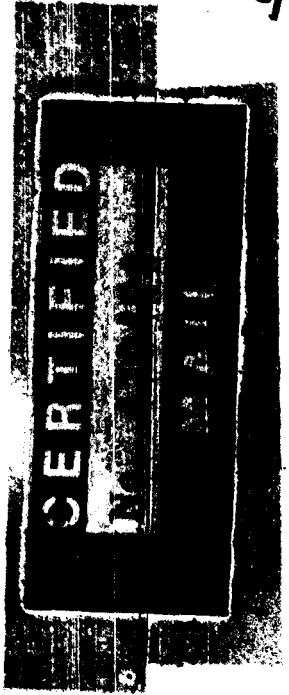
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☐ Undelivered
☐ Address unknown
☐ Insufficient Address
☐ No such Street
☐ No such office in state
☐ Do not re-mail in this envelope

Ismail Ali Hosain
229 North Street
Fairview New York



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

STATE CAMPUS

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Holy City Supermarket, Inc.
and Ismail Ali Hosain, Ind.
3815 Third Ave.
Bronx, NY 10457

OUT OF BUSINESS

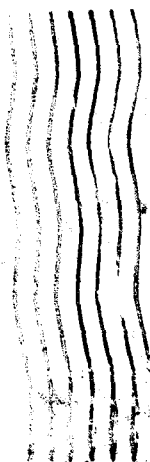
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1961



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

October 23, 1981

Holy City Supermarket, Inc.
and Ismail Ali Hosain, Ind. & as an Officer
3815 Third Ave.
Bronx, NY 10457

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Phone # (518) 457-6240

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cc: Petitioner's Representative
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STATE OF NEW YORK

STATE TAX COMMISSION

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9. The records of petitioner Holy City Supermarket, Inc. were inadequate for the Audit Division to determine the exact amount of its tax liability.

10. Reasonable cause does not exist for the abatement of penalty and interest.

CONCLUSIONS OF LAW

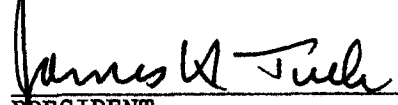
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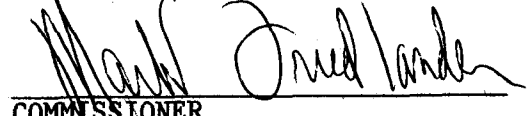
DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER