

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Carlton Pilgrim  
d/b/a Pilgrim Grocery

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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 - 2/28/75.

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 Carlton Pilgrim, d/b/a Pilgrim Grocery, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carlton Pilgrim  
d/b/a Pilgrim Grocery  
661 E. 95th St.  
Brooklyn, NY 11236

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.

*Cornelia A. Hegeland*

*J. Vredenburg*

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

June 19, 1981

Carlton Pilgrim  
d/b/a Pilgrim Grocery  
661 E. 95th St.  
Brooklyn, NY 11236

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CARLTON PILGRIM	:	DECISION
D/B/A PILGRIM GROCERY	:	
	:	
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, 1974 through	:	
February 28, 1975.	:	

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Petitioner, Carlton Pilgrim d/b/a Pilgrim Grocery, 661 East 95th Street, Brooklyn, New York 11236, 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, 1974 through February 28, 1975 (File No. 18722).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 20, 1979 at 9:15 A.M. Petitioner appeared by H. R. Freeman. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from petitioner for the period March 1, 1974 through February 28, 1975 based on the results of a prior audit.

FINDINGS OF FACT

1. Petitioner, Carlton Pilgrim d/b/a Pilgrim Grocery, operated a small grocery store located at 502 Franklin Avenue, Brooklyn, New York.

2. On January 6, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period March 1, 1974 through February 28, 1975 for taxes due of \$1,494.15, plus penalty and interest of \$780.99, for a total of \$2,275.14. Said notice was issued as a result of petitioner's failure to produce books and records for audit.

3. Because of the unavailability of books and records for the period at issue, the Audit Division based its determination on findings from a previous audit conducted for the period June 1, 1971 through February 28, 1974 which increased petitioner's reported taxable sales 1182.36 percent. Petitioner reported taxable sales of \$1,668.00 for the period at issue herein resulting in unreported taxable sales of \$19,721.77 and tax due thereon of \$1,494.15.

4. During the period at issue, petitioner did not retain cash register tapes or maintain any formalized books and records for the business operation. Consequently, it was impossible for the Audit Division to verify petitioner's reported taxable sales or to determine such sales with any exactness.

5. Petitioner offered no evidence to show that the Audit Division's determination was incorrect.

6. Petitioner failed to establish that reasonable cause exists for the cancellation of penalty and interest.

#### CONCLUSIONS OF LAW

A. That in the absence of books and records, the Audit Division properly determined petitioner's taxable sales and sales taxes due from such information as was available as provided in section 1138(a) of the Tax Law.

B. That the petition of Carlton Pilgrim d/b/a Pilgrim Grocery is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 6, 1977 is sustained.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION

*James G. Tully*  
\_\_\_\_\_  
PRESIDENT

*Thomas H. Griffin*  
\_\_\_\_\_  
COMMISSIONER

*Francis R. Koenig*  
\_\_\_\_\_  
COMMISSIONER