

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Puerto Real Food Center, Inc. :

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 - 2/28/77. :

State of New York
County of Albany

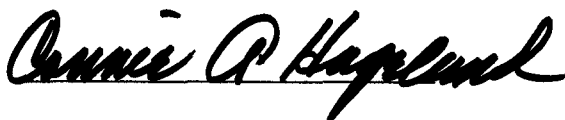
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January, 1981, he served the within notice of Decision by mail upon Puerto Real Food Center, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

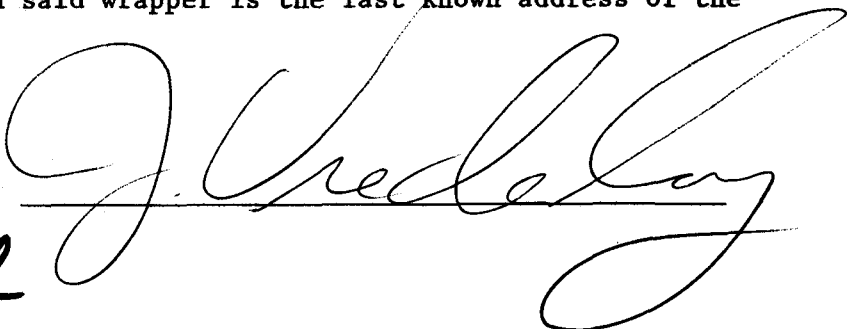
Puerto Real Food Center, Inc.
c/o Vincent Urban, President
14 Wilson Ave.
Brooklyn, NY 11206

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
9th day of January, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

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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 9th day of January, 1981, he served the within notice of Decision by mail upon Wilford Guzman 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. Wilford Guzman
Bookkeeping Processing System
100 Bushwick Ave.
Brooklyn, NY 11206

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
9th day of January, 1981.

Cornie A. Haglund

[Signature]

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

January 9, 1981

Puerto Real Food Center, Inc.
c/o Vincent Urban, President
14 Wilson Ave.
Brooklyn, NY 11206

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
Wilford Guzman
Bookkeeping Processing System
100 Bushwick Ave.
Brooklyn, NY 11206
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PUERTO REAL FOOD CENTER, INC.	:	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, 1974	:	
through February 28, 1977.	:	

Petitioner, Puerto Real Food Center, Inc., 14 Wilson Avenue, Brooklyn, New York 11206, 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, 1977 (File No. 20877).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 30, 1980, at 10:45 A.M. Petitioner appeared by Wilford Guzman. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Audit Division's determination of petitioner's taxable sales for the period March 1, 1974 through February 28, 1977, was proper.

FINDINGS OF FACT

1. Petitioner, Puerto Real Food Center, Inc., operated a grocery store located at 14 Wilson Avenue, Brooklyn, New York.
2. On October 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, 1977 for taxes due of \$5,070.41, plus penalty and interest of \$2,199.52, for a total of \$7,269.93. Said notice

was issued as a result of petitioner's failure to produce sufficient books and records to conduct an audit. The taxes due were estimated based on findings from a prior audit of petitioner's books and records.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period March 1, 1974 through February 28, 1977 to March 19, 1978.

4. The Audit Division had previously performed an audit of petitioner's books and records for the period September 1, 1971 through February 28, 1974 which disclosed that 40 percent of petitioner's gross sales were taxable sales. Since petitioner did not have sufficient records available to conduct an audit for the period at issue herein, the Audit Division applied 40 percent to petitioner's gross sales for the period under audit of \$345,701.00 to determine taxable sales of \$138,277.00 and applicable tax due thereon of \$10,856.62. Petitioner paid sales taxes of \$5,786.21 for the same period, leaving additional taxes due of \$5,070.41.

5. During the period at issue, petitioner operated in the same manner and sold similiar merchandise as it did during the period September 1, 1971 through February 28, 1974.

6. Petitioner contended that the Audit Division did not give consideration to pillferage and inventory losses due to burglaries and waste. Inventory reductions would not effect the amount of taxes determined since the method used by the Audit Division considered items actually sold.

7. Petitioner failed to offer records or any other substantial evidence to show that the Audit Division's determination was incorrect.

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

CONCLUSIONS OF LAW

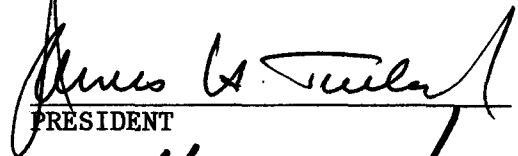
A. That the Audit Division in the absence of sufficient books and records properly determined petitioner's taxable sales from such information as was available, as authorized in section 1138(a) of the Tax Law.

B. That the petition of Puerto Real Food Center, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 6, 1977 is sustained.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER