

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
George's County Service, 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
3/1/74-11/30/77.

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 5th day of February, 1982, he served the within notice of Decision by certified mail upon George's County Service, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George's County Service, Inc.
325 N. Merrick Ave.
Merrick, NY 11566

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
5th day of February, 1982.

James A. Highland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George's County Service, 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 3/1/74-11/30/77 :

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 5th day of February, 1982, he served the within notice of Decision by certified mail upon Joseph Canale the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Canale
Canale & Gerardi
72 Guy Lomardo Ave.
Freeport, NY 11520

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
5th day of February, 1982.

Ernie G. Hopland

J. Vredenburg

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

February 5, 1982

George's County Service, Inc.
325 N. Merrick Ave.
Merrick, NY 11566

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
Joseph Canale
Canale & Gerardi
72 Guy Lombardo Ave.
Freeport, NY 11520
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE'S COUNTY SERVICE, 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 November 30, 1977.	:	

Petitioner, George's County Service, Inc., 325 North Merrick Avenue, Merrick, New York 11566, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the period March 1, 1974 through November 30, 1977 (File Nos. 22664 and 22665).

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 December 11, 1980 at 1:15 P.M. Petitioner appeared by Joseph S. Canale, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the result of a field audit performed by the Audit Division whereby a margin of error determined from a three-month analysis of petitioner's records and applied to the taxable sales reported for the audit period properly reflected petitioner's additional sales tax liability.

FINDINGS OF FACT

1. On May 1, 1978, the Audit Division issued two Notices of Determination and Demand for Payment of Sales and Use Taxes Due against George's County Service, Inc. covering the period March 1, 1974 through November 30, 1977. The

Notices were issued as a result of a field audit and asserted total tax due of \$23,517.34 plus penalties and interest of \$11,151.13 for a total of \$34,668.47.

2. Petitioner executed a consent to extend the period of limitation for assessment to June 20, 1978.

3. Petitioner operated a Gulf service station selling tires, batteries and accessories (T/B/A), gasoline, parts, labor and oil.

4. On audit, the Audit Division reviewed sales of gasoline, parts, service, T/B/A and oil from daily summary sheets maintained by petitioner for the period September 1, 1976 through November 30, 1976. The state gasoline tax of 8¢ per gallon was deleted from gasoline sales for each gallon sold and the difference divided by 108 percent to determine taxable gasoline receipts. The Audit Division found taxable gasoline receipts to be \$45,886.69 for the test period.

The Audit Division then proceeded to mark up petitioner's purchases other than gasoline using estimated mark ups as follows:

Parts	175%
T/B/A	30%
Oil	100%
Outside Labor	25%

The mark ups resulted in taxable sales other than gasoline of \$25,384.00 for the test period.

The Audit Division compared the total sales it determined of \$71,270.69 to sales reported by petitioner of \$52,340.00 for the same period and determined a margin of error rate of 36.17 percent. It then applied the margin of error to the taxable sales reported by petitioner in the audit period and determined additional taxable sales of \$324,716.89 and tax due thereon of \$23,517.34.

5. Petitioner had the following records available for audit: sales journal, daily sheets, sales tax returns, Federal income tax returns and

purchase invoices. Petitioner also had individual sales receipts available for sales other than gasoline. The Audit Division did not establish any insufficiency in petitioner's record keeping for use in determining the exact amount of tax due.

6. Petitioner conceded to errors made in the collection of tax on gasoline sales in that it neglected to include Federal tax when computing its sales tax collections. Sales tax collection errors were also conceded on sales other than gasoline. Petitioner, however, objected to the application of a margin of error based only on a three-month test period when all records were available for audit.

7. Petitioner reviewed its sales records for the period March 1, 1974 through August 31, 1977 and prepared summary schedules of its sales from its daily summary sheets. Taxable gasoline sales excluding the state gasoline tax and including the Federal tax were \$681,903.53. Sales other than gasoline were \$339,088.86, of which \$40,548.79 were exempt repairs made for Bellmore-Merrick Central High School District and Horn Construction Co., Inc., the holder of a direct payment permit number DP002344. The tax due on petitioner's taxable sales for the period March 1, 1974 through August 31, 1977 is \$71,124.62. Petitioner reported sales tax for the same period of \$61,049.95 on its sales and use tax returns filed, a margin of error of 16.5 percent.

8. Petitioner offered no summary of its sales for the period September 1, 1977 through November 30, 1977 to show that its sales and use tax return as filed was correct or that the records were in fact available for that period.

9. Petitioner acted in good faith without intent to evade the tax.

CONCLUSIONS OF LAW

A. That although there is statutory authority for use of a test period to determine the amount of tax due, resort to such method of computing tax liability

must be founded upon an insufficiency of record keeping which makes it virtually impossible to verify such liability and conduct a complete audit (Chartair, Inc. v. State Tax Commission, 65 A.D.2d 44,411 N.Y.S.2d 41.)

B. That the exact amount of taxable sales and tax due could be determined from the books and records maintained by petitioner. The exact amount of tax due is \$10,074.67 for the period March 1, 1974 through August 31, 1977 based on petitioner's books and records.

C. That by petitioner's own admission to errors made in the collection of tax, the return filed for the period September 1, 1977 through November 30, 1977 is insufficient. The margin of error applied by the Audit Division is reduced to 16.5 percent pursuant to Finding #7 for the period September 1, 1977 through November 30, 1977, which results in additional taxable sales of \$9,348.41 and tax due thereon of \$654.39.

D. That the penalties and interest in excess of the minimum statutory rate are cancelled.

E. That the petition of George's County Service, Inc. is granted to the extent indicated in Conclusions "B", "C" and "D" above, that the Audit Division is hereby directed to accordingly modify the Notices of Determination and Demand for Payment of Sales and Use Taxes Due issued May 1, 1978; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

FEB 05 1982

STATE TAX COMMISSION

James W. Treche
PRESIDENT

Francis Q. Koenig
COMMISSIONER

Mark J. [Signature]
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
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George's County Service, Inc.

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3/1/74-11/30/77.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon George's County Service, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George's County Service, Inc.
c/o George Fernandez
118 Soiffer Avenue
N. Bellmore, NY 11710

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
26th day of March, 1982.

Connie R. Fogel

J. Vredenburg

TA 26 (9-79)

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



RETURNED TO WRITER

REASON CHECKED

Unclaimed

Unknown

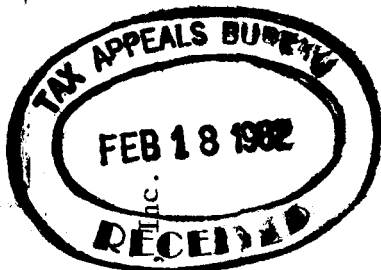
Insufficient address

Moved, Left no address

Do not return to sender

Do not return to sender

George's County Service, Inc.
325 N. Merrick Ave.
Merrick, NY 11566



Call

To George Fernandez
118 SOIFFER AVE
N. LEBLANC

1710