

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Norman & Ellen Laneuville :  
d/b/a Norm's Shell Station :  
: 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 :  
6/1/74 - 5/31/77. :

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State of New York  
County of Albany

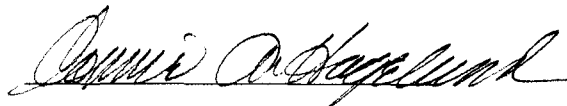
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Norman & Ellen Laneuville, d/b/a Norm's Shell Station the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman & Ellen Laneuville  
d/b/a Norm's Shell Station  
301 East Orvis Street  
Massena, NY 13662

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  
14th day of December, 1982.

  
  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

December 14, 1982

Norman & Ellen Laneuville  
d/b/a Norm's Shell Station  
301 East Orvis Street  
Massena, NY 13662

Dear Mr. & Mrs. Laneuville:

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 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

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

NORMAN and ELLEN LANEUVILLE  
d/b/a NORM'S SHELL STATION

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 June 1, 1974  
through May 31, 1977.

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Petitioners, Norman and Ellen Laneuville, d/b/a Norm's Shell Station, 301 East Orvis Street, Massena, New York 13662, 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 June 1, 1974 through May 31, 1977 (File No. 21119).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on March 22, 1982, at 1:15 P.M. Petitioners appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether an audit of petitioners' books and records by the Audit Division for the period June 1, 1974 through May 31, 1977 accurately determined additional sales taxes due.

FINDINGS OF FACT

1. Petitioners Norman Laneuville and Ellen Laneuville, d/b/a Norm's Shell Station, operated a grocery store and gasoline station.

2. On September 16, 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 covering the period June 1, 1974 through May 31, 1977 for taxes due of \$2,323.58, plus penalty and interest of \$949.96, for a total of \$3,273.54.

3. On audit, the Audit Division analyzed petitioners' grocery purchases for the months of October, 1975, June, 1976 and March, 1977 and found that 68.8 percent of such purchases would result in a taxable sale when sold. The Audit Division also determined gasoline purchases. A mark-up analysis was performed for gasoline and selected taxable grocery items based on cost and selling prices in effect in May, 1979 resulting in a weighted average mark-up of 16.59 percent. Said mark-up was applied to applicable purchases to determine taxable sales of \$204,838.00 for the audit period. Petitioners reported sales of \$171,637.00, leaving taxable sales understated by \$33,201.00.

4. At the hearing, the Audit Division conceded that the taxes determined due on audit of \$2,323.58 be reduced to \$1,469.09. The revision was based on the following factors not considered at the time of audit: inventory adjustments, burglaries, gasoline losses and corrected mark-up percentages supplied by petitioners.

Petitioners conceded that the adjusted gasoline sales were correct.

5. Petitioners' ratio of taxable grocery purchases to total grocery purchases for the entire period under audit was 62.5 percent rather than 68.8 percent computed for the three sample months.

6. Petitioners' overall mark-up on grocery purchases was 16 percent. This was based upon analysis of all taxable items sold and giving consideration to cigarettes sold by the carton and case sales of beer and soda.

7. During the period at issue, petitioners withdrew \$4,000.00 of merchandise from inventory for personal and business consumption. Petitioners' are liable for a use tax on the taxable items (62.5 percent).

8. The books and records maintained by petitioners were inadequate for the Audit Division to determine the exact amount of petitioners sales and use tax liability.

9. Petitioners' adduced no evidence to establish that their failure to pay the taxes at issue was due to reasonable cause.

CONCLUSIONS OF LAW

A. That, in view of petitioners' inadequate recordkeeping, the Audit Division properly determined petitioners' taxable sales in accordance with section 1138(a) of the Tax Law. However, its determination of additional taxable sales and taxes due did not give consideration to the factors set forth in Findings of Fact "4", "5", "6" and "7". Therefore, the additional tax due shall be reduced accordingly.

B. That the petition of Norman and Ellen Laneuville, d/b/a Norm's Shell Station is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 16, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER