

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Charles Lucas :

d/b/a Park Delicatessen :

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 :
9/1/74-11/30/78. :

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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Charles Lucas, d/b/a Park Delicatessen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

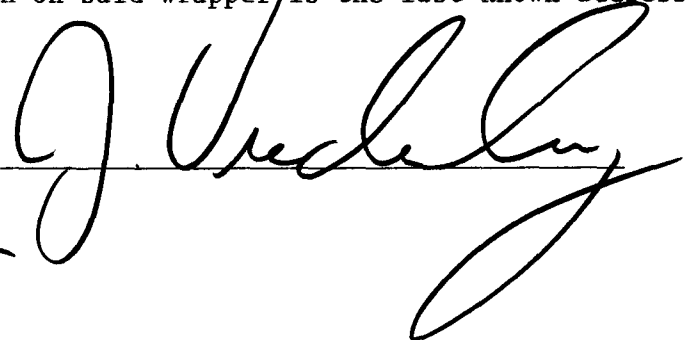
Charles Lucas
d/b/a Park Delicatessen
670 Port Washington Blvd.
Port Washington, NY 11050

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
8th day of September, 1982.


~~AUTHORIZED TO ADMINISTER~~
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Charles Lucas	:	
d/b/a Park Delicatessen	:	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 9/1/74-11/30/78.	:	

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 8th day of September, 1982, he served the within notice of Decision by certified mail upon Aaron D. Mansbach the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

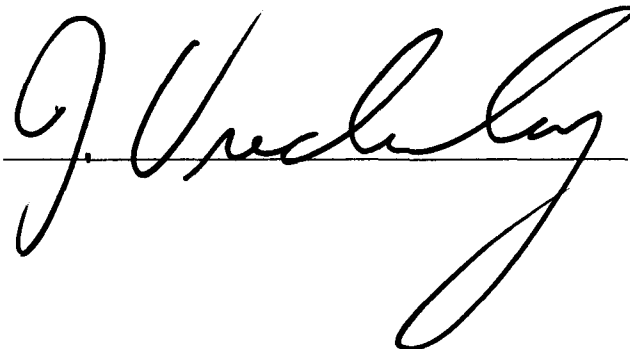
Aaron D. Mansbach
93 Village Dr.
Jericho, L.I., NY 11753

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
8th day of September, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

September 8, 1982

Charles Lucas
d/b/a Park Delicatessen
670 Port Washington Blvd.
Port Washington, NY 11050

Dear Mr. Lucas:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Aaron D. Mansbach
93 Village Dr.
Jericho, L.I., NY 11753
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES LUCAS
d/b/a PARK DELICATESSEN

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, 1974
through November 30, 1978.

Petitioner, Charles Lucas d/b/a Park Delicatessen, 670 Port Washington Boulevard, Port Washington, New York 11050, 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, 1974 through November 30, 1978 (File No. 27593).

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 November 18, 1981 at 2:45 P.M. Petitioner appeared by Aaron D. Mansbach, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Ancelo Scopellito, Esq., of counsel).

ISSUE

Whether penalty and that portion of interest exceeding the minimum statutory rate imposed pursuant to section 1145 of the Tax Law should be cancelled.

FINDINGS OF FACT

1. Petitioner, Charles Lucas d/b/a Park Delicatessen, operated a delicatessen located at 670 Port Washington Boulevard, Port Washington, New York.
2. On May 18, 1979, as the result of an audit, the Audit Division issued notices of determination and demand for payment of sales and use taxes due

against petitioner covering the period September 1, 1974 through November 30, 1978 asserting taxes due of \$16,359.41, plus penalty and interest of \$8,935.28, for a total of \$25,294.69.

3. The audit conducted by the Audit Division disclosed that petitioner's reported taxable sales were understated which was the basis for the above deficiency.

4. At the hearing, the Audit Division conceded that the additional taxes determined due on audit should be reduced to \$11,655.82. Petitioner agreed that said amount is due and owing to New York State.

5. Petitioner timely filed and paid sales tax returns for the period at issue.

6. Petitioner's sales tax returns were prepared by his accountant. Petitioner's cash register did not have the capability of accounting for sales tax collected. The accountant determined taxable sales by applying a percentage to gross sales. The taxable percentage used was based on the accountant's experience with other delicatessens in the Long Island area.

There was another delicatessen located next door to petitioner which closed and reopened under different ownership several times during the audit period. This had a direct effect on petitioner's sales volume. Also, a supermarket opened nearby that caused a substantial decrease in nontaxable sales of meat. Petitioner's accountant did not consider these factors when computing taxable sales.

7. Petitioner acted in good faith and did not willfully intend to understate his taxable sales.

Counsel for the Audit Division agreed that there was no willful intent on the part of petitioner and had no objection to the cancellation of penalty and interest in excess of the minimum statutory rate.

CONCLUSIONS OF LAW

A. That in accordance with Finding of Fact "4", the taxes due are reduced to \$11,655.82.

B. That petitioner's under reporting of taxable sales was due to reasonable cause and not willful neglect; therefore, the penalty and interest exceeding the minimum amount prescribed by law are cancelled as provided in section 1145 of the Tax Law (as amended by Ch. 714, Laws 1979).

C. That the petition of Charles Lucas d/b/a Park Delicatessen is granted to the extent indicated in Conclusions of Law "A" and "B"; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued May 18, 1979; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 08 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER