

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

December 29, 1982

Royal Scarlett 76 Inc.
c/o Vasilios P. Exarchos
32-15 Broadway
Long Island City, NY 11106

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 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
Vasilios P. Exarchos
Exarchos & Misthos
32-15 Broadway
Long Island City, NY 11106
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROYAL SCARLETT 76, 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 December 1, 1974	:	
through February 28, 1977.	:	

Petitioner, Royal Scarlett 76, Inc. c/o Vasilios P. Exarchos, 32-15 Broadway, Long Island City, New York 11106, 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 December 1, 1974 through February 28, 1977 (File No. 30080).

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 April 27, 1982 at 2:45 P.M. Petitioner appeared by Vasilios P. Exarchos, P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

- I. Whether the audit procedures used by the Audit Division to determine additional sales taxes due from petitioner were proper.
- II. Whether petitioner is liable for sales taxes after October 1, 1976.

FINDINGS OF FACT

1. Petitioner, Royal Scarlett 76, Inc., operated a grocery store located at 60 Roslyn Avenue, Sea Cliff, New York. The business was sold on February 28, 1977.

2. On January 3, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period December 1, 1974 through February 28, 1977 for taxes due of \$5,778.00, plus penalty and interest of \$2,527.28, for a total of \$8,305.28. Said notice was issued as a result of petitioner's failure to submit bulk sale information requested by the Audit Division.

3. Petitioner filed an application for a hearing to review the aforesaid notice of tax due.

4. Petitioner provided the Audit Division with the following books and records for audit: general ledger for the period November, 1974 through September, 1975, cash receipts journal for the period July, 1975 through October, 1976, cash disbursements journal for the periods December, 1974 through September, 1975 and January, 1976 through October, 1976 and purchase invoices for the months of August, 1976 and September, 1976.

The Audit Division analyzed purchase invoices for September, 1976 and found that 37.9 percent of such purchases would be taxable when resold. Gross sales of \$172,825.00 were determined for the audit period from the cash receipts journal (averages were used for those periods where sales were not available). The above taxable percentage was applied to gross sales to arrive at taxable sales of \$65,500.63 with sales tax due thereon of \$4,741.09. Petitioner paid sales taxes of \$341.85 for the same period leaving additional taxes due of \$4,399.24. Petitioner did not file sales tax returns for the periods March 1, 1975 through May 31, 1975, September 1, 1975 through November 30, 1975 and March 1, 1976 through February 28, 1977.

5. On March 31, 1980, the Audit Division issued a Notice of Assessment Review which adjusted the tax due to conform with the results of the foregoing audit.

6. The books and records maintained by petitioner were incomplete and insufficient for the Audit Division to determine petitioner's sales tax liability with any exactness.

7. At a pre-hearing conference, petitioner documented that sales tax returns were filed for the periods ending May 31, 1975 and May 31, 1976 with payments of \$180.15 and \$51.10, respectively. The Audit Division therefore conceded that, the taxes due should be further adjusted to \$4,167.99.

8. Petitioner entered into an agreement to sell its right, title and interest in the grocery business on July 21, 1976 with a closing anticipated sometime in August, 1976. However, delays arose because of problems with the purchasers negotiating a lease with the landlord and repairs which had to be made to the premises. A new agreement of sale was executed and transfer of title took place on February 28, 1977.

Petitioner, however, ceased business operations and vacated the premises on October 1, 1976.

9. Reasonable cause did not exist for petitioner's failure to file sales tax returns or pay the taxes at issue.

CONCLUSIONS OF LAW

A. That since petitioner's recordkeeping was insufficient, the audit procedures and tests adopted by the Audit Division to determine petitioner's taxable sales were proper in accordance with section 1138(a) of the Tax Law (Matter of Chartair, Inc. v. State Tax Commission, 65 A.D.2d 44).

B. That the additional taxes due are reduced to \$4,167.99 to reflect the payments indicated in Finding of Fact "7".

C. That petitioner made no sales after October 1, 1976. Accordingly, the additional sales taxes due based on taxable sales determined for the periods thereafter are cancelled.

D. That the petition of Royal Scarlett 76, Inc. is granted to the extent indicated in Conclusions of Law "B" and "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 3, 1978 and revised March 31, 1980; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Royal Scarlett 76 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 12/1/74-2/28/77.		

State of New York
County of Albany

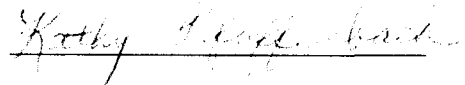
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Royal Scarlett 76 Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Royal Scarlett 76 Inc.
c/o Vasilios P. Exarchos
32-15 Broadway
Long Island City, NY 11106

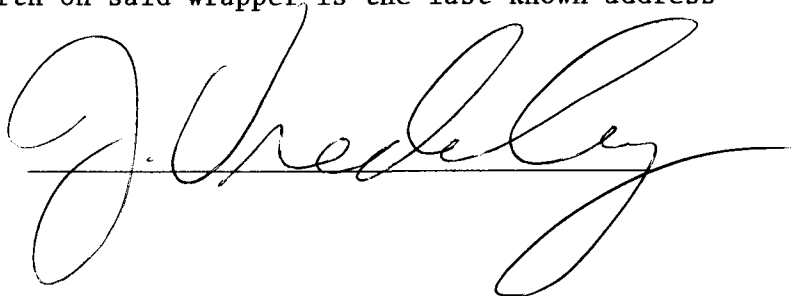
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
29th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE TAX COMMISSION

State of New York
County of Albany

Vasilios P. Exarchos
Exarchos & Misthos
32-15 Broadway
Long Island City, NY 11106

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.

Young H. H. Hall

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

J. Keckly

P 230 844 327
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

SENT TO Gas: 1105 P. E. Xarchos		
STREET AND NO. Gas: 1105 P. E. Xarchos + misthos		
32-15 Broadway		
P.O., STATE AND ZIP CODE Long Island City N.Y. 11106		
POSTAGE \$		
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	¢
	SPECIAL DELIVERY	¢
	RESTRICTED DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED	¢
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$
POSTMARK OR DATE		

PS Form 3800, Apr. 1976

P 230 844 326
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

SENT TO Rosal Scarlett 76 Inc		
STREET AND NO. c/o Gas: 1105 P. E. Xarchos		
32-15 Broadway		
P.O., STATE AND ZIP CODE Long Island City N.Y. 11106		
POSTAGE \$		
CONSULT POSTMASTER FOR FEES	CERTIFIED FEE	¢
	SPECIAL DELIVERY	¢
	RESTRICTED DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED	¢
	SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
	SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$
POSTMARK OR DATE		

PS Form 3800, Apr. 1976