

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

September 30, 1983

Merokian Service Center, Inc.
c/o Antonio Notaris
747 Third Ave.
New York, NY 10017

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Antonio F. Notaris
747 Third Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Merokian Service Center, Inc. :
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 6/1/76-7/2/79. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 30th day of September, 1983, she served the within notice of Decision by certified mail upon Merokian Service Center, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Merokian Service Center, Inc.
c/o Antonio Notaris
747 Third Ave.
New York, NY 10017

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
30th day of September, 1983.

Susan Powell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Connie Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Merokian Service 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 6/1/76-7/2/79. :
_____ :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 30th day of September, 1983, she served the within notice of Decision by certified mail upon Antonio F. Notaris the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Antonio F. Notaris
747 Third Ave.
New York, NY 10017

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
30th day of September, 1983.

Susan Powell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Connie Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| MEROKIAN SERVICE 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 June 1, 1976 | : | |
| through July 2, 1979. | : | |

Petitioner, Merokian Service Center, Inc., c/o Antonio Notaris, C.P.A., 747 Third Avenue, New York, New York 10017, 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, 1976 through July 2, 1979 (File No. 32975).

On February 21, 1983, petitioner filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the Audit Division used proper audit procedures in determining petitioner's sales tax liability.

FINDINGS OF FACT

1. On August 24, 1979, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Merokian Service Center, Inc., in the amount of \$42,137.36, plus penalty of \$7,709.08 and interest of \$7,910.44, for a total due of \$57,756.88 for the period June 1, 1976 through July 2, 1979.

2. On September 29, 1980, following submission of additional information by petitioner's accountant, the Audit Division issued a Notice of Assessment Review reducing the amount assessed to \$20,038.54, plus penalty and interest of \$10,274.37, for a total due of \$30,312.91.

3. Petitioner operated a service station which sold gasoline and oil and tires, batteries and accessories. Petitioner purchased gasoline from various suppliers during the audit period and, as a result, its purchase records were very limited and sporadic.

4. On audit, the auditor found that petitioner had no original books and records available. Because petitioner had switched among numerous spot market suppliers during the audit period, the auditor found it impossible to verify the gasoline purchases through the suppliers.

5. Petitioner's accountant submitted an analysis of deposits, payrolls and purchases compiled from available records. After evaluating petitioner's analysis, the auditor decided to accept the purchase figures compiled by petitioner's accountant. The auditor applied markups of 185 percent to parts and materials, 100 percent to grease and oil, and 15 percent to gasoline purchases.

6. Petitioner did not object to the method used to determine tax due, but did object to the markup percentages used. Petitioner maintained that markup percentages of 150 percent for parts and 10 percent for gasoline should have been used. However, due to the poor condition of its books and records, petitioner could not substantiate either of the aforesaid figures.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides that "[i]f necessary, the tax may be estimated on the basis of external indices." Inasmuch as petitioner's

books and records were virtually nonexistent, the auditor was justified in applying estimated markup percentages to petitioner's purchase figures in determining petitioner's tax liability.

B. That "[w]hen records are not provided or are incomplete and insufficient it is [the Tax Commission's] duty to select a method reasonably calculated to reflect the taxes due (citation omitted). The burden then rests upon the taxpayer to demonstrate...that the method of audit or the amount of the tax assessed was erroneous (citation omitted)." (Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 A.D.2d 858). Since petitioner could provide no proof to substantiate its proposed markup percentages, it has failed to meet its burden of proving that the amount of tax assessed was erroneous.

C. That the petition of Merokian Service Center, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 24, 1979, as modified by the Notice of Assessment Review issued September 29, 1980, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 30 1983

Rodwich Gw Clau
PRESIDENT

Francis R Koemp
COMMISSIONER

Mark J. Medland
COMMISSIONER

P 470 316 030

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | |
|---|----|
| Sent to <i>MeroKian Service Center, Inc.</i> | |
| <i>La Antonio Notaris</i> | |
| Street and No. <i>747 Third Ave.</i> | |
| P.O., State and ZIP Code <i>New York, NY 10017</i> | |
| Postage | \$ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to whom and Date Delivered | |
| Return Receipt Showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ |
| Postmark or Date | |

PS Form 3800, Feb. 1982

P 470 316 031

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

| | |
|---|----|
| Sent to | |
| <i>Antonio F. Notaris</i> | |
| Street and No. <i>747 Third Ave.</i> | |
| P.O., State and ZIP Code <i>New York, NY 10017</i> | |
| Postage | \$ |
| Certified Fee | |
| Special Delivery Fee | |
| Restricted Delivery Fee | |
| Return Receipt Showing to whom and Date Delivered | |
| Return Receipt Showing to whom, Date, and Address of Delivery | |
| TOTAL Postage and Fees | \$ |
| Postmark or Date | |

PS Form 3800, Feb. 1982