

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

January 10, 1983

Ahmed K. Muflahi
d/b/a Downtown Supermarket
c/o Nashaat Antonious
P.O. Box 242 Canal St. Station
New York, NY 10013

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
Nashaat Antonious
P.O. Box 242, Canal St. Station
New York, NY 10013
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ahmed K. Muflahi :
d/b/a Downtown Supermarket :

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 :
6/1/75-5/31/78. :

State of New York
County of Albany

Kathy Pfaffenbach, 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 10th day of January, 1983, he served the within notice of Decision by certified mail upon Ahmed K. Muflahi, d/b/a Downtown Supermarket, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ahmed K. Muflahi
d/b/a Downtown Supermarket
c/o Nashaat Antonious
P.O. Box 242 Canal St. Station
New York, NY 10013

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
10th day of January, 1983.

Kathy Pfaffenbach

Jean A. Schull
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ahmed K. Muflahi :
d/b/a Downtown Supermarket :
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 6/1/75-5/31/78. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Kathy Pfaffenbach, 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 10th day of January, 1983, he served the within notice of Decision by certified mail upon Nashaat Antonious the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Nashaat Antonious
P.O. Box 242, Canal St. Station
New York, NY 10013

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
10th day of January, 1983.

Joan A. Schetty
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Kathy Pfaffenbach

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AHMED K. MUFLAHI	:	
D/B/A DOWNTOWN SUPERMARKET	:	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, 1975	:	
through May 31, 1978.	:	

Petitioner, Ahmed K. Muflahi d/b/a Downtown Supermarket, c/o Nashaat Antonious, P.O. Box 242, Canal Street Station, New York, New York 10013, 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, 1975 through May 31, 1978 (File No. 27553).

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 February 4, 1982 at 10:45 A.M. Petitioner appeared by Nashaat Antonious, Accountant. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the results of a field audit performed, whereby the Audit Division conducted a one-day observation test to determine petitioner's taxable sales, properly reflected taxable sales for the audit period and the additional sales tax due thereon.

II. Whether the Consent Extending the Period of Limitation for Assessment executed by Ahmed K. Muflahi was valid.

FINDINGS OF FACT

1. On July 6, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Ahmed K. Maflahi, Ahmed Kasin Et Al D/B/A Downtown Supermarket [sic] for the period June 1, 1975 through May 31, 1978. The Notice asserted additional tax due of \$6,648.08, plus penalty and interest of \$3,456.40, for a total of \$10,104.48. The Notice was issued as a result of a field audit.

2. On September 8, 1978, petitioner, Ahmed K. Muflahi, executed a consent extending the period of limitation for the issuance of an assessment for the period June 1, 1975 through May 31, 1978 to September 20, 1979.

3. Petitioner, along with other partners, operated a retail grocery store at 96 Court Street, Brooklyn, New York. The other partners were not represented at the hearing.

4. On audit, the Audit Division found that petitioner estimated taxable sales reported on sales and use tax returns filed at approximately 10 percent of gross sales. Petitioner had available daily sales summaries for the last four filing quarters of the audit period only. These summaries, however, were insufficient for the verification of petitioner's actual taxable sales made or the proper collection of sales taxes thereon. Petitioner did not have sufficient merchandise purchase invoices available to perform an indirect audit whereby purchases could be marked up to retail prices and gross and taxable sales could be determined. The Audit Division therefore observed the operation on October 16, 1978. The auditor was on the business premises from 9:30 a.m. to 4:00 p.m. on that day and found that taxable sales were made in the amount of \$89.11 during that period. The Audit Division increased taxable sales by 20 percent to account for the time the store was open but the auditor was not on the premises.

(The Audit Division determined that the store was operated from 8:00 a.m. to 9:00 p.m., six days per week.) The total taxable sales determined on October 16, 1978 of \$106.93 was extended to yearly taxable sales using a six-day workweek and a 50-week year to allow for vacation. The taxable sales were then extended by three to determine taxable sales of \$96,237.00 for the three-year audit period. Petitioner reported taxable sales of \$13,136.00 on sales and use tax returns filed for the same period. The Audit Division thereby determined additional taxable sales of \$83,101.00 and the tax due thereon of \$6,648.08.

5. Petitioner submitted U.S. Partnership Returns of Income filed as follows:

<u>Year</u>	<u>Gross Sales</u>
1975	\$46,650.00
1976	48,210.00
1977	47,800.00

Petitioner argued that a more appropriate method of applying the October 16, 1978 observation results would be to determine a ratio of taxable sales to gross sales made that day and apply that ratio to gross sales as reported on the partnership returns filed and noted above. Petitioner contended gross sales made on October 16, 1978 were \$789.00. A review of weekly sales summaries submitted, purported to be for 1978 but undated for the most part, showed postings of daily sales ranging from \$100.77 to \$247.00.

6. Petitioner further argued that the store closed from two to four weeks every quarter and that the store was only open five days a week from 9:00 a.m. to 4:00 or 5:00 p.m. Sales summaries submitted disclosed normal business activity during six days a week. Petitioner offered no substantial evidence reflecting when the store was closed for vacations or that the hours were different from the ones determined and used on audit.

7. Petitioner's representative argued that the petitioner was not aware of the consequences that would arise from the signing of the Consent to Extend the Period of Limitation for Assessment and that had he been present, he would have advised that it not be signed. The auditor testified that the Consent was given to petitioner's representative to obtain petitioner's signature.

8. Petitioner did not show reasonable cause for not remitting the proper sales taxes due.

CONCLUSIONS OF LAW

A. That section 1135 of the Tax Law provides that every person required to collect tax shall keep records of every sale and of the tax payable thereon. Such records shall be available for inspection and examination at any time upon demand and shall be preserved for a period of three years.

B. That section 1138(a) of the Tax Law provides that if a return when filed is incorrect or insufficient, the amount of tax due shall be determined from such information as may be available. If necessary, the tax may be estimated on the basis of external indices such as purchases or other factors.

C. That petitioner did not keep adequate records where sales could be confirmed. That the procedure employed by the Audit Division of observing sales being made disclosed the insufficiency of returns filed. Petitioner failed to show that the procedure was unreasonable. Moreover, exactness is not required where it is the taxpayer's own failure to maintain proper records which prevents exactness in the determination of sales tax liability (Markowitz v. State Tax Commission, 54 A.D.2d 1023, 44 N.Y.2d 684).

D. That the Consent to Extend the Period of Limitation for Assessment to September 20, 1979 was obtained in the normal course of a field audit of

petitioner's records as provided by section 1147(c) of the Tax Law. Petitioner has failed to show that it was not properly obtained.

E. That the petition of Ahmed Muflahi d/b/a Downtown Supermarket is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 6, 1979 is sustained with applicable penalty and interest thereon.

DATED: Albany, New York

JAN 10 1983

STATE TAX COMMISSION

ACTING PRESIDENT

Richard R. Burkhardt
Francis Q. Koenig

COMMISSIONER

Mark D. Anderson
COMMISSIONER

P 278 401 561
RECEIPT FOR CERTIFIED MAIL

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

SENT TO		Ahmed K. Muflahi d/b/a Downtown Supermarket c/o Nashaat Antonious	
STREET AND NO.		P.O. Box 242, Canal St. Station	
P.O., STATE AND ZIP CODE		New York, NY 10013	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
	RETURN RECEIPT SERVICE	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 278 401 562
RECEIPT FOR CERTIFIED MAIL

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

SENT TO		Nashaat Antonious	
STREET AND NO.		P.O. Box 242, Canal St. Station	
P.O., STATE AND ZIP CODE		New York, NY 10013	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
	RETURN RECEIPT SERVICE	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