

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

December 20, 1983

Regal Delicatessen, Inc.
1110 Old Country Rd.
Plainview, NY 11801

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Lester Cooper
Frederick S. Todman & Company
111 Broadway
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Regal Delicatessen, Inc.	:	
	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article 28 & 29 of the Tax Law for the Period 6/1/74 - 11/30/77.	:	
	:	

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Regal Delicatessen, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Regal Delicatessen, Inc.
1110 Old Country Rd.
Plainview, NY 11801

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of December, 1983.

David Parchuck

Bernie A. Haglund
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Regal Delicatessen, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/74 - 11/30/77. :
:

AFFIDAVIT OF MAILING

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Lester Cooper, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lester Cooper
Frederick S. Todman & Company
111 Broadway
New York, NY 10006

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of December, 1983.

David Parchuck

James J. O'Keefe
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
REGAL DELICATESSEN, 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, 1974	:	
through November 30, 1977.	:	

Petitioner, Regal Delicatessen, Inc., 1110 Old Country Road, Plainview, New York 11801, 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 November 30, 1977 (File No. 24385).

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 May 25, 1983 at 9:15 A.M. Petitioner appeared by Richard M. Asche, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether the penalty and that portion of interest exceeding the minimum statutory rate asserted against petitioner on additional sales taxes determined due on audit should be cancelled.

FINDINGS OF FACT

1. Petitioner, Regal Delicatessen, Inc., operated a restaurant and delicatessen located at 1110 Old Country Road, Plainview, New York.
2. On August 21, 1978, 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 petitioner covering the period June 1, 1974 through November 30, 1977 for taxes due of \$19,535.92, plus penalty and interest of \$9,414.94, for a total of \$28,950.86.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1974 through May 31, 1977, to September 20, 1978.

4. On audit, the Audit Division categorized petitioner's purchases based on its analysis of purchase invoices for the test period of March 1, 1977 through May 31, 1977. Markup percentages were applied to each category of purchases to determine gross sales of \$1,058,750.00. A one day observation test was used to ascertain the taxable portion of food sales. The resultant taxable sales totaled \$818,436.00 or an increase of 35.98 percent over reported taxable sales.

Initially, the period under audit was June 1, 1974 through May 31, 1977. However, the Audit Division updated the audit to include the period June 1, 1977 through November 30, 1977. The above error factor was used to determine additional taxable sales for said period.

5. Petitioner reported a substantially higher amount of taxable sales for the periods ending August 31, 1977 and November 30, 1977 than it did for the other periods under audit. The Audit Division conceded that the additional taxes assessed for those periods should be deleted from the notice, thereby reducing petitioner's liability to \$15,923.88.

Petitioner agreed to the revised tax deficiency.

6. Except for cash register tapes, petitioner provided the Audit Division with all the books and records it requested.

7. Petitioner timely filed the sales tax returns filed for the period at issue herein and timely paid the tax due shown thereon.

8. Petitioner employed a bookkeeper who kept a record of daily receipts. This information was furnished to an accountant that was responsible for maintaining the books and records. The accountant prepared the sales tax returns filed by petitioner.

9. This was the first sales tax audit of petitioner's books and records. The Internal Revenue Service audited petitioner's corporation tax return for the fiscal year ended July, 1975 and found no deficiency.

CONCLUSIONS OF LAW

A. That section 1145(a)(1)(i) of the Tax Law authorizes the imposition of penalty and interest for failure to file a return or to pay over any tax when due. Subparagraph (ii) of section 1145(a)(1) provides for the remission of penalty and that portion of interest that exceeds the minimum statutory rate if the Tax Commission determines that the failure or delay was due to reasonable cause and not due to willful neglect.

B. That petitioner did not willfully attempt to underreport its taxable sales; petitioner relied on its bookkeeper and accountant to determine taxable sales and report the correct amount of tax due thereon. Accordingly, the penalty is cancelled and interest shall be reduced to the minimum statutory rate.


C. That the petition of Regal Delicatessen, Inc. is granted to the extent indicated in Finding of Fact "5" and Conclusion of Law "B"; that in all other

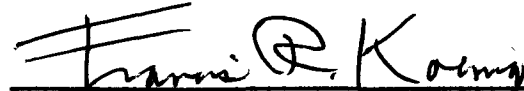
respects the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 21, 1978 is sustained.

DATED: Albany, New York

DEC 20 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Regal Delicatessen</i> <i>one</i>	
Street and No. <i>1110 Old Country Rd.</i>	
P.O., State and ZIP Code <i>Plainville, NY 11801</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 470 315 171

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Lester Copper</i>	
Street and No. <i>111 Broadway</i>	
P.O., State and ZIP Code <i>NY, NY 10006</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