

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

September 28, 1983

Saul's Pharmacy, Inc.
201 W. Genesee St.
Fayetteville, NY 13066

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
Hillard H. Cohen
Shannon, Cohen & Kauffman, P.C.
206 Highland St.
Syracuse, NY 13203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Saul's Pharmacy, 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 12/1/75-8/31/78. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

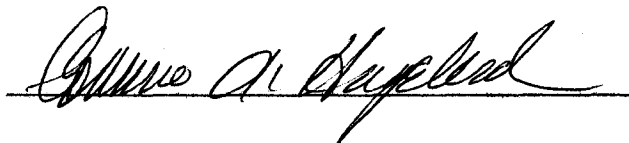
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Saul's Pharmacy, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

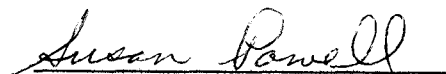
Saul's Pharmacy, Inc.
201 W. Genesee St.
Fayetteville, NY 13066

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
28th day of September, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Saul's Pharmacy, 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 12/1/75-8/31/78. :

State of New York
County of Albany

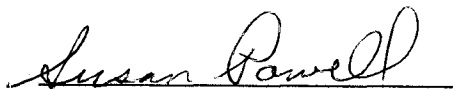
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Hillard H. Cohen the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hillard H. Cohen
Shannon, Cohen & Kauffman, P.C.
206 Highland St.
Syracuse, NY 13203

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
28th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

SAUL'S PHARMACY, 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 Periods December 1,
1975 through August 31, 1978.

Petitioner, Saul's Pharmacy, Inc., 201 West Genesee Street, Fayetteville, New York 13066, 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 periods December 1, 1975 through August 31, 1978 (File No. 30957).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on January 13, 1982, at 9:15 A.M. Petitioner appeared by Hillard H. Cohen, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether a petition to review a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was timely filed.

FINDINGS OF FACT

1. On September 14, 1979, the Audit Division, pursuant to an audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Saul's Pharmacy, Inc. for the periods December 1, 1975 through August 31, 1978 in the amount of \$2,162.62 plus interest of \$357.86 for a total of \$2,520.48. An assessment review by the Audit Division reduced the assessment

to \$2,104.44 plus interest of \$432.72 as of March 20, 1980 for a total of \$2,537.15.

2. On December 18, 1979, the Tax Appeals Bureau received a petition from Saul's Pharmacy, Inc. for redetermination of the assessment dated September 14, 1979. The petition was signed on November 13, 1979. The post mark on the envelope was Syracuse, New York, December 14, 1979.

3. Petitioner alleged that the petition was mailed on December 12, 1979, also that the Notice of Determination was received at some indeterminate late date.

4. On October 21, 1980, the Audit Division by letter advised petitioner that its petition for a hearing was untimely under Section 1138 of the Tax Law (it was not filed within 90 days) and therefore it had no "petition rights".

5. The Audit Division offered affidavits that Notices must be and are mailed on the date of said Notice. Records indicated that the notice to petitioner was the only one mailed that week and that the statute of limitations was about to run on issuance.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law requires that a determination shall finally and irrevocably fix the tax unless the person against whom it is assessed within ninety days shall apply to the Tax Commission for a hearing. Notice by the petitioner postmarked on the 91st day and received on the 95th day was therefore not timely. Matter of Artists Lake Homeowners Associations, Inc. v. Tully, et al., Sup. Ct. Albany Co. Sp. Term, December 11, 1981.

B. That the petition of Saul's Pharmacy, Inc. is denied and that the Notice issued on September 14, 1979 as reduced by review, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983

Rodriguez aw Chen
PRESIDENT

Francis R Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER

P 470 316 022

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Saul's Pharmacy, Inc.</u>	
Street and No. <u>201 W. Genesee St.</u>	
P.O., State and ZIP Code <u>Fayetteville, NY 13066</u>	
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 470 316 023

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>H. P. H. and H. Cohen</u>	
Street and No. <u>Shannon, Cohen + Kauffman, P.C.</u>	
P.O., State and ZIP Code <u>206 Highland St.</u>	
P.O., State and ZIP Code <u>Syracuse, NY 13203</u>	
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