

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

November 10, 1983

T.J.K. Food Corp.  
249-04 Horace Harding Blvd.  
Douglaston, NY 11362

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  
Irving Edelman  
Edelman & Aronowitz  
225 Broadway  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
T.J.K. Food Corp. :  
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 September 1, 1975 - May 31, 1978. :  
\_\_\_\_\_

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 10th day of November, 1983, she served the within notice of Decision by certified mail upon T.J.K. Food Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

T.J.K. Food Corp.  
249-04 Horace Harding Blvd.  
Douglaston, NY 11362

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 November, 1983.

Maury L. Sennelle

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
T.J.K. Food Corp. :  
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 September 1, 1975 - May 31, 1978. :  
\_\_\_\_\_

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 10th day of November, 1983, she served the within notice of Decision by certified mail upon Irving Edelman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving Edelman  
Edelman & Aronowitz  
225 Broadway  
New York, NY 10007

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 November, 1983.

Maucha L. Sennelle

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
T.J.K. FOOD CORP.	:	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 September 1, 1975	:	
through May 31, 1978.	:	

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Petitioner, T.J.K. Food Corp., 249-04 Horace Harding Boulevard, Douglaston, New York 11362, 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 September 1, 1975 through May 31, 1978 (File No. 24641).

A formal hearing was commenced before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1982 at 2:45 P.M., continued on May 23, 1983 at 1:15 P.M. and concluded on June 23, 1983 at 11:00 A.M. Petitioner appeared by Edelman and Aronowitz, Esqs. (Irving Edelman, Esq., of counsel). The Audit Division appeared at the February 25, 1982 hearing by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel) and at the subsequent hearings by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

#### ISSUE

Whether petitioner may be granted a two-year period within which to remit to the Audit Division sales and use taxes admittedly due.

#### FINDINGS OF FACT

1. On October 6, 1978, the Audit Division issued to petitioner, T.J.K. Food Corp. ("TJK"), as purchaser in a bulk sale, a Notice of Determination and

Demand for Payment of Sales and Use Taxes Due, assessing sales and use taxes under Articles 28 and 29 of the Tax Law in the amount of \$33,000.00 (plus interest and penalty) estimated to be due from the seller, RJP Food Corp. also known as Douglaston Coffee Shop, for the period September 1, 1975 through May 31, 1978.

2. TJK timely filed a petition for revision of the above-stated determination, claiming that: "Based upon the operation of this business for the past 9 months, the estimated tax due is not feasible, since the store does not do that much volume."

3. The hearing commenced on February 28, 1982 was continued at petitioner's request, in order to afford it an opportunity to present its books and records to the Audit Division for a more accurate estimation of its tax liability.

4. On June 20, 1983, Tai Jin Kim, president of TJK, executed a Withdrawal of Petition and Discontinuance of Case and agreed to the remittance by petitioner of sales and use taxes in the amount of \$11,793.12, plus interest.

5. At the hearing on June 23, 1983, petitioner's representative moved the Commission to order a deferred payment schedule, spanning a period of two years and requiring remittance of approximately \$400.00 monthly for the initial 12 months and approximately \$1,100.00 monthly for the remainder of the period. Such schedule would enable petitioner to timely pay the notes assumed on the purchase of the business and its sales and use tax liability. Petitioner's representative alleged that these terms of a deferred plan had been presented to but rejected by the Tax Compliance Bureau of the Department of Taxation and Finance.

CONCLUSIONS OF LAW

A. That the liability of a purchaser, transferee or assignee of business assets sold, transferred or assigned in bulk for the payment of taxes due from the seller, transferor or assignor arising under section 1141(c) of the Tax Law shall be finally and irrevocably fixed unless the purchaser, transferee or assignee, within 90 days after the Tax Commission has given notice to such purchaser, transferee or assignee of the total amount of taxes claimed to be due from the seller, transferor or assignor, applies to the Commission for a hearing or unless the Commission on its own motion redetermines such liability. Tax Law section 1138(a)(3). TJK timely filed a petition contesting the estimated amount of taxes claimed to be due from the seller, but thereafter withdrew its petition consenting to remit taxes in the amount of \$11,793.12 with interest. TJK's tax liability has thus been fixed by agreement, and only the manner of payment remains unresolved.

B. That the hearing for which TJK petitioned is the proper forum for determining the amount of taxes due, but not the manner of collecting such taxes. The scope of a hearing held pursuant to section 1138(a)(3) is limited to the determination by the Commission of the tax liability of the purchaser, transferee or assignee.

C. That the petition of T.J.K. Food Corp. is hereby denied, and the notice of determination and demand issued on October 6, 1978, as modified by the Withdrawal of Petition and Discontinuance of Case, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983

Rodrich Arcan  
PRESIDENT

Francis R. Koeng  
COMMISSIONER

Mark J. [Signature]  
COMMISSIONER

P 470 315 135

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>T. J. K. Food Corp.</i>	
Street and No. <i>249-04 Horace Harding Blvd.</i>	
P.O., State and ZIP Code <i>Douglaston, NY 11362</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 470 315 136

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Irving Edelman</i>	
Street and No. <i>225 Broadway</i>	
P.O., State and ZIP Code <i>NY, NY 10007</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