

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

November 10, 1983

W.C.W. Markets, Inc.  
663 E. Park Ave.  
Long Beach, NY 11561

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  
Alvin Silverman  
c/o Durso Markets  
755 Co-Op City Blvd.  
Bronx, NY 10475  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
W.C.W. Markets, 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 6/1/74 - 8/31/77. :  
\_\_\_\_\_

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 W.C.W. Markets, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

W.C.W. Markets, Inc.  
663 E. Park Ave.  
Long Beach, NY 11561

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.

Maucha L. Grunelle

Connie Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
W.C.W. Markets, Inc.	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period 6/1/74 - 8/31/77.	:	

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 Alvin Silverman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alvin Silverman  
c/o Durso Markets  
755 Co-Op City Blvd.  
Bronx, NY 10475

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.

Martha L. Brunelle

Connie Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
W.C.W. MARKETS, 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 August 31, 1977.	:	

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Petitioner, W.C.W. Markets, Inc., 663 East Park Avenue, Long Beach, New York 11572, 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 August 31, 1977 (File No. 23102).

A formal hearing was commenced before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1982 at 9:15 A.M. Petitioner appeared by Alvin Silverman, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Kevin A. Cahill, Esq., of counsel). In lieu of appearing at a continued hearing, petitioner elected to have the Tax Commission decide this matter on the record of the September 15, 1982 hearing and additional documents submitted, by waiver of hearing dated June 21, 1983.

#### ISSUE

Whether the Audit Division properly imposed against petitioner penalties pursuant to Tax Law section 1145(a)(1)(i).

#### FINDINGS OF FACT

1. On June 5, 1978, following conduct of a field audit, the Audit Division issued to petitioner, W.C.W. Markets, Inc. ("WCW"), a Notice of Determination

and Demand for Payment of Sales and Use Taxes Due, assessing additional sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1974 through August 31, 1977, plus interest, and penalties pursuant to section 1145(a)(1)(i). On May 12, 1977, Jason Witchel, then secretary-treasurer of WCW, executed on petitioner's behalf a consent extending the period of limitation for assessment of sales and use taxes for the aforementioned period to September 20, 1978.

2. By letter to the Tax Commission dated June 21, 1983, Mr. Witchel, currently president of WCW, agreed to the remittance by petitioner of sales and use taxes in the amount of \$37,330.17, plus interest, and further, requested abatement of all penalties. Attached to and submitted with Mr. Witchel's letter was his statement setting forth the reasons he sought abatement of penalties. He alleged that: (a) the bookkeeper for the corporation was authorized and responsible to execute all duties relevant to bookkeeping and the filing of tax returns; (b) she harbored an intense resentment toward him and the firm and as a result, was very derelict in her duties; (c) aware that such dereliction would eventually be uncovered, she resigned her position and moved to an unknown location outside New York State; and (d) to date, neither he nor petitioner has had any communication with her.

3. The Audit Division has offered no specific reason for imposing penalties on petitioner; presumably, penalties were levied because an audit performed for an earlier three-year period had resulted in additional sales and use taxes due from WCW.

#### CONCLUSIONS OF LAW

A. That Tax Law section 1145(a)(1)(i) provides for the imposition of penalties for failure to timely file returns or to pay taxes as required under Articles 28 and 29, as follows:

"Any person failing to file a return or to pay or pay over any tax to the tax commission within the time required by this article shall be subject to a penalty of five percent of the amount of tax due if such failure is for not more than one month, with an additional one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate; plus interest at the rate of one percent of such tax or one-twelfth of the annual rate of interest set by the tax commission pursuant to section eleven hundred forty-two, whichever is greater, for each month of delay after such return was required to be filed or such tax became due."

The Tax Commission may abate such penalties where, in its judgment, "such failure or delay was due to reasonable cause and not due to willful neglect...".  
Section 1145(a)(1)(ii).

B. That all interest and penalties assessed against petitioner in excess of the minimum amount of interest prescribed by law are hereby cancelled. An earlier audit which resulted in taxes due from petitioner does not, by itself, manifest a willful neglect of the tax statutes on petitioner's part; for instance, it is not known whether the earlier audit and the audit for the period under consideration revolved around similar issues and areas.

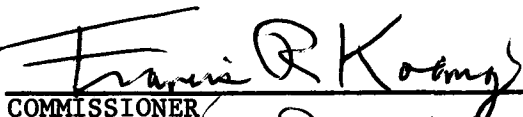
C. That the petition of W.C.W. Markets, Inc. is granted to the extent indicated in Conclusion of Law "B", and the penalties assessed in the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on June 5, 1978 are cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 470 315 143

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>W.C.W. Markets, Inc.</i>	
Street and No. <i>463 E. Park Ave.</i>	
P.O., State and ZIP Code <i>Long Beach, NY 11561</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 470 315 144

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Alvin Silverman</i>	
Street and No. <i>7550 OpCity Blvd.</i>	
P.O., State and ZIP Code <i>Brooklyn, NY 10475</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