

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

July 15, 1983

June Zuhlsdorf
d/b/a June's General Store
DeGrasse - Russell Rd.
DeGrasse, NY 13629

Dear Ms. Zuhlsdorf:

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
William P. Christy
1204 James St.
Syracuse, NY 13203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
June Zuhlsdorf :
d/b/a June's General Store : 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 6/1/77-2/29/80. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon June Zuhlsdorf, d/b/a June's General Store the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

June Zuhlsdorf
d/b/a June's General Store
DeGrasse - Russell Rd.
DeGrasse, NY 13629

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
15th day of July, 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 :
June Zuhlsdorf :
d/b/a June's General Store :

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 6/1/77-2/29/80. :

State of New York
County of Albany

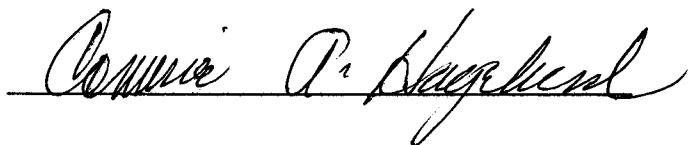
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon William P. Christy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William P. Christy
1204 James 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
15th day of July, 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	:	
	:	
JUNE ZUHLSDORF	:	DECISION
d/b/a JUNE'S GENERAL STORE	:	
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, 1977	:	
through February 29, 1980.	:	

Petitioner, June Zuhlsdorf, d/b/a June's General Store, DeGrasse-Russell Road, DeGrasse, New York 13629, 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, 1977 through February 29, 1980 (File No. 31685).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 26, 1982 at 1:15 P.M. with all briefs to be submitted by December 31, 1982. Petitioner appeared by William P. Christy, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether the audit procedures and tests used by the Audit Division in an examination of petitioner's books and records to determine additional sales taxes due were proper.

FINDINGS OF FACT

1. Petitioner, June Zuhlsdorf, d/b/a June's General Store, operated a grocery store located in DeGrasse, New York. Petitioner also sold gasoline which comprised approximately 49 percent of sales.

2. On August 11, 1980, 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, 1977 through February 29, 1980 for taxes due of \$4,851.77, plus minimum statutory interest of \$677.74, for a total of \$5,529.51.

3. On audit, the Audit Division initially reviewed cash register tapes and found that such tapes were inadequate for verifying taxable sales reported because the tapes did not identify the specific item sold. Without such identification, the auditor was unable to determine whether sales tax was properly charged on taxable items. Therefore, the Audit Division used the following procedures to verify taxable sales.

Purchase invoices were analyzed for May, 1979 to determine purchases of items that would result in a taxable sale when resold. This analysis revealed that taxable items represented 72.32 percent of total purchases for that month which consisted of the following: beer, soda, candy, oil, soaps, records and tapes, cigarettes, gasoline, sundries, sandwiches, fishing equipment and paper products.

A markup test was performed for selected items within each of the foregoing categories of purchases using costs and selling prices in effect in May, 1980 resulting in a weighted average markup of 35 percent.

The Audit Division applied 72.32 percent to total purchases for the audit period of \$366,300.45 (after an adjustment for inventory increase) to determine taxable purchases of \$264,908.49.

The weighted average markup was applied to the taxable purchases to arrive at taxable sales of \$357,626.46. This amount was adjusted to \$353,156.46 to allow 1¼ percent for pilferage. Petitioner reported taxable sales of \$283,843.00, leaving additional taxable sales of \$69,313.46 and tax due thereon of \$4,851.77.

4. Petitioner's federal income tax returns filed for 1978, 1979 and 1980 showed an overall mark-up of 10, 11 and 24 percent, respectively. Petitioner reasoned that the 35 percent mark-up on taxable items was incorrect because in order to have overall mark-ups as reported on the federal returns, nontaxable items would have had to been sold for cost or less than cost.

5. Petitioner argued that her mark-ups were lower in 1977 and 1978 than they were in 1980. Petitioner was given the opportunity to submit evidence after the hearing to substantiate this argument; however, no such evidence was submitted.

CONCLUSIONS OF LAW

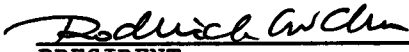

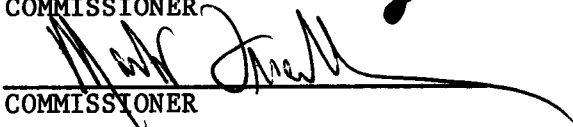
A. That petitioner's books and records were insufficient for verifying taxable sales receipts and, therefore, the Audit Division's method of computing petitioner's tax liability was proper in accordance with section 1138(a) of the Tax Law (Matter of Chartair, Inc. v. State Tax Commission, 65 A.D. 2d 44).

B. That once it is established that the Audit Division's independent determination of sales was permissible, the burden is upon petitioner to show that this determination is incorrect (Matter of Meyer v. State Tax Commission, 61 A.D. 2d 223, mot. for lv. to app. den. 44 NY 2d 645). Petitioner failed to overcome this burden of showing error.

C. That the petition of June Zuhlsdorf, d/b/a June's General Store, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 11, 1980 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER

P 481 208 104

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Jane Zuhlsdorf</u>	
<u>416 1/2 Jane's General Store</u>	
Street and No. <u>1204 James St.</u>	
P.O., State and ZIP Code <u>DeGrasse NY 13629</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 481 208 105

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>William P. Christy</u>	
<u>DeGrasse - Russell Rd.</u>	
Street and No. <u>Syracuse, NY 13205</u>	
P.O., State and ZIP Code	
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