

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

September 21, 1984

Hassan Ansari
c/o Finkel, Goldstein & Berzow
67 Wall St.
New York, NY 10005

Dear Mr. Ansari:

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
Benjamin Finkel
Finkel, Goldstein & Berzow
67 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Hassan Ansari

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 9/1/72-12/17/79.

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 21st day of September, 1984, he served the within notice of Decision by certified mail upon Hassan Ansari, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hassan Ansari
c/o Finkel, Goldstein & Berzow
67 Wall St.
New York, NY 10005

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
21st day of September, 1984.

David Parchuck

William A. Hammond
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Hassan Ansari	: : :	: : :
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 9/1/72-12/17/79.	: : : :	: : : :

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 21st day of September, 1984, he served the within notice of Decision by certified mail upon Benjamin Finkel, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Benjamin Finkel
Finkel, Goldstein & Berzow
67 Wall St.
New York, NY 10005

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
21st day of September, 1984.

David Parchuck

James A. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HASSAN ANSARI : 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, 1972 :
through December 17, 1979.

Petitioner, Hassan Ansari, c/o Finkel, Goldstein & Berzow, 67 Wall Street, New York, New York 10005, 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, 1972 through December 17, 1979 (File No. 33709).

A formal 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 July 21, 1983 at 1:15 P.M., with all briefs to be submitted by September 30, 1983. Petitioner appeared by Benjamin Finkel, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

- I. Whether petitioner was the purchaser in a bulk sales transaction.
- II. Whether the Audit Division properly determined the taxable sales of Lew-Kam Food Corp. for the period December 1, 1977 through December 17, 1979.
- III. Whether petitioner is liable for the penalty and interest assessed against the seller.

FINDINGS OF FACT

1. On January 2, 1980, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk from petitioner, Hassan Ansari, regarding the purchase of the assets of Lew-Kam Food Corp. ("Lew-Kam") which operated a

grocery business known as C-Town. Said notification indicated December 17, 1979 as the scheduled date of sale and listed the total sales price of the business as \$110,000.00. The sales price of the furniture and fixtures was \$10,000.00 on which the bulk sales tax of \$800.00 has been paid. The notification also indicated that an escrow fund was being held by Arthur M. Klapper, Esq. The amount of the escrow fund was not disclosed on the notice. However, the agreement of sale indicated that \$11,000.00 was held in escrow.

2. On January 9, 1980, the Audit Division notified petitioner, as purchaser, and the escrow agent, of a possible claim for New York State and local sales and use taxes due from the seller.

3. On March 21, 1980, the Audit Division issued the following notices of determination and demand for payment of sales and use taxes due to petitioner:

<u>Notice Number</u>	<u>Period</u>	<u>Tax Due</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
S800317710C	9/1/72 - 2/29/76	\$17,380.20	\$4,345.07	\$11,786.24	\$33,511.51
S800317711C	3/1/76 - 8/31/79	36,054.25	6,485.43	6,004.98	48,544.66
S800317712C	9/1/79 - 12/17/79	8,400.00	624.00	206.69	9,230.69

The aforesaid notices indicated that the taxes were determined due from Lew-Kam Food Corp. t/a C-Town and represented petitioner's liability, as purchaser, in accordance with section 1141(c) of the Tax Law.

4. The taxes determined due from Lew-Kam for the period September 1, 1972 through November 30, 1977 amounting to \$25,108.73 resulted from its derivative liability as the bulk sale purchaser of the same grocery business operated by Turin Market, Inc. ("Turin").

At a pre-hearing conference held on April 27, 1981, Turin and the Audit Division agreed to a revised tax liability of \$13,993.92. The resolution was reached on the basis of an audit which revealed that 20 percent of Turin's sales were taxable. Turin paid the revised taxes due plus applicable interest due thereon in full satisfaction of the notice.

5. Following a pre-hearing conference with petitioner, his tax liability was reduced to \$36,725.72 to reflect cancellation of the taxes assessed for the period September 1, 1972 through November 30, 1977 against Lew-Kam.

The remaining taxes due from Lew-Kam (\$36,725.72) represented unpaid sales tax returns filed for the periods ending November 30, 1978 (\$5,595.52), February 28, 1978 (\$5,944.40), May 31, 1979 (\$5,677.12) and August 31, 1979 (\$5,833.12). In addition, Lew-Kam failed to submit certain information requested by the Audit Division regarding the bulk sale of the business and, therefore, the Audit Division held that 20 percent of reported gross sales were taxable. This percentage was based on the audit of Turin's books and records referred to in Finding of Fact "4" above.

6. The agreement entered into for the sale of the grocery business stated that the parties to the contract were Lew-Kam, seller and Hassan Ansari, purchaser.

Paragraph 24 of the agreement provided that the purchaser could assign the lease to a corporation formed under and by virtue of the laws of the State of New York, provided that the purchaser was a stockholder of said corporation.

7. The Certificate of Incorporation of American Victuals, Inc. was filed with New York State Department of State on January 10, 1980. Petitioner was the sole stockholder of said corporation.

Petitioner subsequently transferred title to the assets he acquired pursuant to the above agreement to American Victuals, Inc.

8. Petitioner argued that the actual purchaser of the grocery business operated by Lew-Kam was American Victuals, Inc. rather than himself, individually. Petitioner maintained that his intent throughout the negotiations for the purchase of the business was to make the corporation the purchaser. Petitioner

further relies on a letter dated July 15, 1981 from the Department of Taxation and Finance which stated in part "(t)he notice issued contains in part the assessment issued to American Victuals at the time it acquired the business from Lew Kam Enterprises (sic) and the tax due from American Victuals, Inc." Petitioner interpreted this statement as an acknowledgement by the Department that the sale was actually to American Victuals, Inc. The letter was in response to an inquiry by petitioner's representative regarding a bulk sale between American Victuals, Inc. and Vo Chan Enterprises, Inc.

9. Notwithstanding the arguments made above, petitioner claimed that it was improper for the Audit Division to estimate the taxable sales of Lew-Kam, and that the purchaser is not liable for penalties and interest incurred by the seller.

10. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That petitioner, Hassan Ansari, was the bulk sale purchaser of the grocery business operated by Lew-Kam Food Corp. The agreement of sale was entered into and executed by Hassan Ansari, personally; the notification of the sale named Hassan Ansari as the purchaser; the sale took place on December 17, 1979 and American Victuals, Inc. was not formed until January 10, 1980. Accordingly, the Audit Division properly assessed petitioner as purchaser in a bulk sales transaction for the taxes determined due from the seller.

B. That the Tax Commission notified petitioner of the amount of the taxes due from Lew-Kam Food Corp. within ninety (90) days of receipt of the notice of sale as required by section 1141(c) of the Tax Law and therefore, petitioner is personally liable for the payment of such taxes as also provided in said section of the Tax Law.

C. That Lew-Kam Food Corp. failed to provide the Audit Division with the information it requested in order to make a determination as to the accuracy of the sales tax returns filed; therefore, the Audit Division determined Lew-Kam's taxable sales from such information as was available and external indices as authorized in section 1138(a) of the Tax Law.


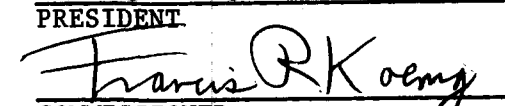

D. That a purchaser in a bulk sales transaction under section 1141(c) of the Tax Law is, in addition to any sales and use taxes determined to be due from the seller, also liable for penalties or interest accrued thereon [20 NYCRR 537.4(a)]. However, petitioner acted in good faith at all times and therefore, the penalty is remitted in accordance with section 1145(a)(ii) of the Tax Law and interest shall be reduced to the minimum amount prescribed by law.

E. That the petition of Hassan Ansari is granted to the extent indicated in Conclusion of Law "D" and Finding of Fact "5"; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued March 21, 1980; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 21 1984

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-103-517

Sent to	
Missan Ansari	
Street and No.	
67 Finkel, Goldstein & Berzow	
P.O. State and ZIP Code	
NY, NY 10005	
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	

P 693 168 635

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-103-517

Sent to	
Benjamin Finkel	
Street and No.	
Finkel, Goldstein, & Berzow	
P.O. State and ZIP Code	
NY, NY 10005	
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	