

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

November 9, 1984

Parkchester Restaurant Corp.  
c/o Ioannis Katechis, President  
2529 Cruger Avenue  
Bronx, NY 10467

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, 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  
Elias P. Bonaros  
29-16 212th St.  
Bayside, NY 11360  
Taxing Bureau's Representative



## STATE TAX COMMISSION

Bruce A. Hargrave  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition

of

PARKCHESTER RESTAURANT 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 December 1, 1977 :  
through August 31, 1980. :

---

Petitioner, Parkchester Restaurant Corp., c/o Ioannis Katechis, president, 2529 Cruger Avenue, Bronx, New York 10467, 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 December 1, 1977 through August 31, 1980 (File No. 35635).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 13, 1983 at 2:45 P.M. Petitioner appeared by Elias P. Bonaros, Esq. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined petitioner's additional sales tax liability by increasing taxable sales reported by 100 percent.

FINDINGS OF FACT

1. On June 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Parkchester Food Shop - Parkchester Restaurant Corp. covering the period December 1, 1977 through August 31, 1980. The Notice was issued as a result of a field audit and

asserted additional sales tax due of \$18,441.92, plus interest of \$3,120.32, for a total of \$21,562.24.

2. Petitioner executed a consent to extend the period of limitation for the issuance of an assessment for the period December 1, 1977 through February 28, 1978 to June 20, 1981.

3. On examination, the auditor for the Audit Division reconciled sales as reported on sales and use tax returns filed with petitioner's records and with Federal returns filed for the fiscal years ended February, 1979 and February, 1980. Purchases from petitioner's records were also reconciled with the Federal returns for the same period. Both the sales and purchases were found to be substantially in agreement.

Petitioner did not retain guest checks or cash register tapes during the audit period. Petitioner did, however, record sales daily in a daybook along with cash purchases or expenses paid each day. Attached to each page in the daybook was a tape showing the total of each day's receipts.

In order to verify the accuracy of the recording of sales on the cash register, the auditor scheduled a two-day observation test. This appointment, however, was cancelled by petitioner's representative. The auditor then requested that guest checks and cash register tapes be saved for review. In the meantime, letters were sent to petitioner's suppliers in order to confirm the amount of purchases recorded in petitioner's records.

4. On February 18, 1981, the auditor advised the petitioner that a field examination of the petitioner's books and records had been scheduled for February 24, 1981. The auditor requested the following records in order to proceed with the audit:

- "1) Purchase invoices for March 1979 through February 1980 inclusive.

- 2) Cash register tapes for February 1, 1981 through the current day (date of proposed appointment).
- 3) Guest checks for February 1, 1981 through the current date (date of proposed appointment).
- 4) Bank Statements for December 1977 through August 1980 inclusive."

The auditor analyzed this information and found little, if any, discrepancy between these figures and those reported in the petitioner's daybook.

5. Subsequently, the auditor requested that guest checks and cash register tapes be maintained and made available for the period May 1, 1981 through June 6, 1981. Observations of the business operation were made on February 18, 1981 and June 5, 1981. At the February 18, 1981 observation from 12:15 to 1:15 p.m., the following was determined:

- a. Vendor rings up all sales on register.
- b. Guest checks are written only for customers sitting at tables; customers at the counter do not receive guest checks.
- c. There were approximately 25 customers between 12:15 and 1:15 p.m.
- d. Vendor does write amounts charged to counter customers on the backs of guest checks given to table customers which enables him to have a record of total daily sales.
- e. There were two employees working behind the counter and one waitress.
- f. Two meals were purchased for which sales tax was charged as follows:

|     |               |
|-----|---------------|
| 1)  | \$2.95        |
| Tax | .20           |
|     | <u>\$3.15</u> |

|     |               |
|-----|---------------|
| 2)  | \$3.35        |
| Tax | .25           |
|     | <u>\$3.60</u> |

- g. There was also a sign in the front window advertising a breakfast special.

At the June 5, 1981 observation, guest check number 92838 was received by the observer. The bill was \$5.95 plus \$.50 sales tax. The amount of \$6.45 was rung up on the cash register.

6. The auditor analyzed the guest checks retained by petitioner for June 5 and June 6, 1981. The guest check number 92838 as noted above was not

included in the guest checks reviewed. The auditor therefore determined that all sales were not reported on sales and use tax returns filed. The taxable sales as reported on sales and use tax returns filed were increased by 100 percent and additional sales tax was determined due of \$18,441.92.

7. Petitioner's markups on Federal tax returns filed for the fiscal years ended February, 1979 and February, 1980 were 258.63 percent and 263.17 percent respectively.

Petitioner reported sales tax on sales and use tax returns filed by dividing its total receipts by 108 percent.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides that if a return required to be filed is incorrect or insufficient, the amount of tax due shall be determined from such information as may be available. If necessary, the tax may be estimated on the basis of external indices such as purchases or other factors.

B. That based on all of the evidence in the record, including the guest checks submitted at the auditor's request, it appears that petitioner accurately reported its taxable sales.

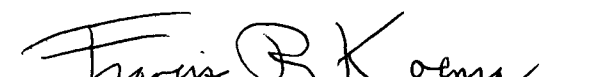
C. That the petition of Parkchester Restaurant Corporation is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 20, 1981 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 693 168 884

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

|   |                              |
|---|------------------------------|
| Sent to   | Parkchester Restaurant Corp. |
| Street and No.  | 10 Joannis Katechis, Pres.   |
| P.O., State and ZIP Code                                      | 2529 Cruger Avenue           |
| Postage   | BROOKLYN, NY 10467           |
| 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 693 168 885

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

|   |                    |
|---|--------------------|
| Sent to   | Elias P. Bonaros   |
| Street and No.  | 29-16 212 St.      |
| P.O., State and ZIP Code                                      | Brooklyn, NY 11360 |
| 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  |                    |