

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
James Tadros :
d/b/a Tadros Modern Groceteria : AFFIDAVIT OF MAILING
:
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 :
6/1/78 - 5/31/81. :

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 4th day of April, 1985, he served the within notice of Decision by certified mail upon James Tadros d/b/a Tadros Modern Groceteria, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James Tadros
d/b/a Tadros Modern Groceteria
1425 South Ave.
Syracuse, NY 13207

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
4th day of April, 1985.

David Parchuck

William P. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
James Tadros	:	
d/b/a Tadros Modern Groceteria	:	AFFIDAVIT OF MAILING
	:	
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 6/1/78 - 5/31/81.	:	

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 4th day of April, 1985, he served the within notice of Decision by certified mail upon Louis Pascarella, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis Pascarella
157 Cresline Drive
Syracuse, NY 13206

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
4th day of April, 1985.

David Parchuck

James C. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

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

April 4, 1985

James Tadros
d/b/a Tadros Modern Groceteria
1425 South Ave.
Syracuse, NY 13207

Dear Mr. Tadros:

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
Louis Pascarella
157 Cresline Drive
Syracuse, NY 13206
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JAMES TADROS	:	DECISION
D/B/A TADROS MODERN GROCETERIA	:	
	:	
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, 1978	:	
through May 31, 1981.	:	

Petitioner, James Tadros d/b/a Tadros Modern Groceteria, 1425 South Avenue, Syracuse, New York 13207, 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, 1978 through May 31, 1981 (File No. 35845).

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 16, 1984 at 1:15 P.M. Petitioner appeared by Louis Pascarella. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from petitioner based on an examination of available books and records.

FINDINGS OF FACT

1. Petitioner, James Tadros d/b/a Tadros Modern Groceteria, operated a small grocery store located at 1425 South Avenue, Syracuse, New York.
2. On September 14, 1981, 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, 1978 through May 31, 1981 for taxes due of \$5,763.88, plus interest of \$777.03, for a total of \$6,540.91.

3. On audit, the Audit Division found that petitioner estimated that 28 percent of gross sales were taxable. Petitioner's cash register did not produce a tape nor did petitioner maintain any other verifiable record of individual sales receipts. Total sales were recorded in a notebook on a daily basis.

In order to verify the accuracy of the taxable sales reported, the Audit Division analyzed purchase invoices for the period March 1, 1980 through May 31, 1980 to determine those purchases that would result in taxable sales when resold. Petitioner's purchase invoices were incomplete and therefore it was necessary for the Audit Division to obtain the missing purchases from the suppliers. Purchases of taxable items for the test period amounted to \$10,750.83. Based upon audits of similar businesses, the Audit Division determined that the average markup for taxable items was 22 percent. This percentage was applied to the taxable purchases to arrive at taxable sales of \$13,116.00 for the test period. Petitioner reported sales of \$6,721.00 for the same period, leaving additional taxable sales of \$6,395.00, or an error factor of 95.15 percent. The error factor was applied to the reported taxable sales for the audit period to determine total additional taxable sales of \$82,341.09 and tax due thereon of \$5,763.88.

4. James Tadros executed an agreement, dated May 28, 1981, whereby he agreed that the period March 1, 1980 through May 31, 1980 was to be used as a test period and the results of the test period would be the basis for determining any liability for the entire audit period.

5. Petitioner's representative, Louis Pascarella, analyzed purchases and sales for the audit period. Based on this analysis, Mr. Pascarella estimated that 42 percent of petitioner's gross sales were taxable sales which resulted in a deficiency of \$3,263.88. Mr. Pascarella attributed this deficiency to employee theft of merchandise.

6. Petitioner offered no evidence to establish that the tax assessed by the Audit Division was erroneous.

CONCLUSIONS OF LAW

A. That section 1135(a) of the Tax Law provides that every person required to collect tax shall keep records of every sale and of all amounts paid, charged or due thereon and of the tax payable thereon. Such records shall include a true copy of each sales slip, invoice, receipt or statement.

Petitioner did not have cash register tapes or any other record that would serve as a verifiable record of taxable sales. Under such circumstances, the Audit Division's use of a test period and markup percentage audit was proper in accordance with section 1138(a) of the Tax Law (Matter of Urban Liquors, Inc. v. State Tax Commission, 90 A.D.2d 576; Matter of Hanratty's/732 Amsterdam Tavern, Inc. v. State Tax Commission, 88 A.D.2d 1028).

B. That the Audit Division reasonably calculated petitioner's tax liability and petitioner has failed to demonstrate by clear and convincing evidence that the audit method or the amount of tax assessed was erroneous (Matter of Surface Line Operators Fraternal Organization, Inc. v. Tully, 84 A.D.2d 858).

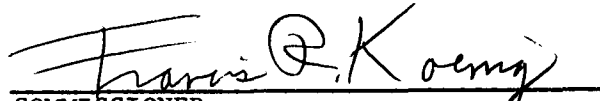
C. That the petition of James Tadros d/b/a Tadros Modern Groceteria is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 14, 1981 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

APR 04 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 169 705

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Jojo Tades</i>	
Street and No. <i>1475 South Ave</i>	
P.O., State and ZIP Code <i>Spencer NY 13207</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	

P 693 169 706

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Louis Passavella</i>	
Street and No. <i>157 Crestline Dr.</i>	
P.O., State and ZIP Code <i>Spencer NY 13206</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	