

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Isabel Grocery Store

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period Ending 6/1/80 - 4/22/83.

State of New York :

ss.:

County of Albany :

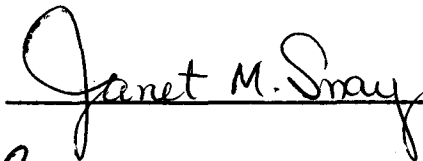
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 12th day of June, 1986, he/she served the within notice of Decision by certified mail upon Isabel Grocery Store the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

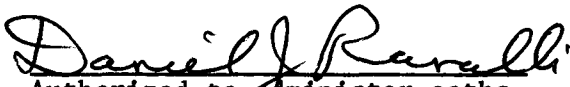
Isabel Grocery Store
c/o Oscar Sosa
5218 8th Ave.
Brooklyn, NY 11220

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
12th day of June, 1986.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Isabel Grocery Store : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period Ending 6/1/80 - 4/22/83.

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 12th day of June, 1986, he served the within notice of Decision by certified mail upon Sol Lipper, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sol Lipper
1270 E. 72nd St.
Brooklyn, NY 11234

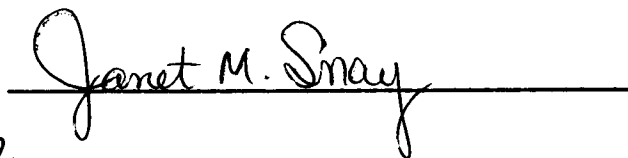
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
12th day of June, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



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

June 12, 1986

Isabel Grocery Store
c/o Oscar Sosa
5218 8th Ave.
Brooklyn, NY 11220

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Sol Lipper
1270 E. 72nd St.
Brooklyn, NY 11234

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ISABEL GROCERY STORE	:	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, 1980	:	
through April 22, 1983.	:	

Petitioner, Isabel Grocery Store, c/o Oscar Sosa, 5218 8th Avenue, Brooklyn, New York 11220, 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, 1980 through April 22, 1983 (File No. 56754).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 20, 1985 at 9:15 A.M., with all briefs to be submitted by February 4, 1986. Petitioner appeared by Sol Lipper, P.A. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner filed a petition for a hearing with the State Tax Commission within 90 days of the issuance of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due.

FINDINGS OF FACT

1. Oscar Sosa, d/b/a Isabel Grocery Store, owned and operated a small grocery store located at 5218 8th Avenue, Brooklyn, New York. On or about April 22, 1983, Mr. Sosa sold Isabel Grocery Store to Enid Grocery Store, Inc.

2. On August 22, 1983, the Audit Division, through its Brooklyn District Office, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner, Isabel Grocery Store. The notice was addressed to Isabel Grocery Store at 5218 8th Avenue, Brooklyn, New York and was sent by certified mail. Said notice encompassed the period June 1, 1980 through April 22, 1983 and determined additional sales tax due of \$2,739.35, plus penalty of \$512.87 and interest of \$506.81, for a total amount due of \$3,759.03.

3. The Notice mailed to petitioner was issued under "Notice Number S830822740C" and it also contained the notation "BSQ#147,534". The following explanation was shown on the notice:

"As a result of a review of returns filed and you not sending information requested, 40% of your reported gross sales are held to be taxable. The following taxes are determined to be due in accordance with Section 1138 of the Sales Tax Law.

THE TAX ASSESSED HEREIN HAS BEEN ESTIMATED AND/OR DETERMINED TO BE DUE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1138 OF THE TAX LAW AND MAY BE CHALLENGED THROUGH THE HEARING PROCESS BY THE FILING OF A PETITION WITHIN 90 DAYS."¹

4. On August 22, 1983, the Audit Division, again through its Brooklyn District Office, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Enid Grocery Store, Inc. ("Enid"). Said notice determined taxes, penalty and interest due in amounts identical to those assessed against petitioner herein (see: Finding of Fact "2", supra). The notice mailed to Enid was issued under "Notice Number S830822741C" and also

1 The notice also advised the taxpayer, pursuant to a statement printed in the upper left hand corner of the notice, that "This determination shall be final unless an application for hearing is filed with the State Tax Commission within 90 days from the date of this notice...".

contained the notation "BSQ #147,534". The following explanation was shown on the notice issued to Enid:

"The following taxes are determined to be due from Isabel Grocery Store and represents your liability, as purchaser, in accordance with Section 1141(c) of the Sales Tax Law."

5. Petitioner contends that he never received the notice addressed to Isabel Grocery Store but that Enid advised him of the notice it had recieved. On August 29, 1983, petitioner's then representative, Michael A. Saez, sent a letter of protest to the Audit Division's Brooklyn District Office referencing "Isabel Grocery Store - BSQ 147,534". On September 18, 1984, petitioner sent a formal petition to the State Tax Commission. In its Answer to petitioner's Perfected Petition, the Audit Division asserted that:

"... the Petitioner's application for a hearing is untimely, because it was received by the Tax Appeals Bureau September 20, 1984 which is a greater time than the ninety days the applicant had to properly file."

6. At the hearing held herein the Audit Division also asserted that Mr. Saez's letter dated August 29, 1983 cannot be considered an application for hearing within the meaning and intent of subsection (a)(1) of section 1138 of the Tax Law.

CONCLUSIONS OF LAW

A. That Commission regulation 20 NYCRR 601.3 states as follows:

"(a) Filing of petition. All proceedings before the Commission must be commenced by the filing of a petition with the operating bureau involved in the controversy.

* * *

(b) Form of petition. The petition should be typewritten if possible, but handwritten will be accepted. No telegram, cablegram, radiogram, telephone call or similar communication will be recognized as a petition."

B. That petitioner's representative's letter dated August 29, 1983 constituted a petition as contemplated in regulation 20 NYCRR 601.3, supra.


Since the letter dated August 29, 1983 falls within 90 days of the date of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, said letter is deemed a timely filed petition.

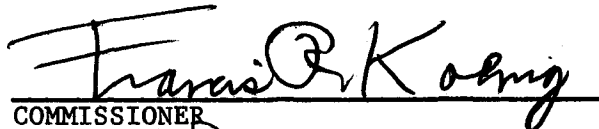
C. That the petition of Isabel Grocery Store is deemed timely filed and the matter is to be returned to the Tax Appeals Bureau for further proceedings not inconsistent herewith.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 12 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 319 372 721

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to	
Isabel Grocery Store	
Street and No. c/o Oscar Sosa	
5218 8th Ave.	
P.O., State and ZIP Code	
Brooklyn, N.Y. 11220	
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 319 372 722

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED

NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to	
Sol Lipper	
Street and No.	
1270 E. 72nd St.	
P.O., State and ZIP Code	
Brooklyn, N.Y. 11234	
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	