

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Pulaski Bridge Service Station, Inc. : 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 6/1/79-5/31/82. :
_____:

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 20th day of October, 1986, he/she served the within notice of Decision by certified mail upon Pulaski Bridge Service Station, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Pulaski Bridge Service Station, Inc.
321 McGuinness Blvd.
Brooklyn, NY 11222

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
20th day of October, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE TAX COMMISSION

David Perosh
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 20, 1986

Pulaski Bridge Service Station, Inc.
321 McGuinness Blvd.
Brooklyn, NY 11222

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:
Andy Fradelakis
30-07 Broadway
Astoria, NY 11106

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PULASKI BRIDGE SERVICE STATION, INC.	:	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, 1979	:	
through May 31, 1982.	:	

Petitioner, Pulaski Bridge Service Station, Inc., 321 McGuinness Boulevard, Brooklyn, New York 11222, 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, 1979 through May 31, 1982 (File Nos. 45649 and 47853).

A 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 April 30, 1986 at 2:45 P.M. Petitioner appeared by Andy Fradelakis, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Laura Nath, Esq., of counsel).

ISSUE

Whether the Audit Division properly estimated petitioner's taxable sales on the basis of external indices.

FINDINGS OF FACT

1. Petitioner, Pulaski Bridge Service Station, Inc., operated a Mobil gasoline service station located at 321 McGuinness Boulevard, Brooklyn, New York. Petitioner had three service bays to perform repair work.

2. On August 20, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes

Due covering the period June 1, 1979 through August 31, 1980 for taxes due of \$26,160.52, plus penalty and interest of \$21,049.69, for a total of \$47,210.21. On April 27, 1983, a second notice was issued for the period September 1, 1980 through May 31, 1982 which assessed additional taxes due of \$38,086.78 plus penalty and interest. On April 7, 1983, the Audit Division issued a Notice of Assessment Review that revised the tax due on the notice issued August 20, 1982 to \$19,979.64 plus penalty and interest.

3. On July 16, 1982, George Papadopoulos, president of petitioner, executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1979 through May 31, 1980 to July 20, 1983.

4. On audit, the Audit Division found that petitioner maintained incomplete and inadequate books and records. Petitioner did not have any record of daily gasoline sales or repair sales to verify sales shown on worksheets prepared by petitioner's accountant. In addition, purchase invoices were not available. In order to verify taxable sales reported, the Audit Division contacted Mobil Oil Corporation to obtain the quantity of gasoline purchased by petitioner during the audit period. The total gallons provided by Mobil (531,465) agreed with the amount shown on the accountant's worksheet. The gallons, by grade of gasoline, were multiplied by the statewide average selling price (excluding the state gasoline tax and sales tax) to arrive at total gasoline sales of \$605,944.00. The Audit Division also estimated repair sales of \$257,400.00 due to the lack of sales and purchase invoices. This amount was determined based on two mechanics working 6 hours a day, 5½ days a week and using an hourly rate of \$25.00, including parts. The combined audited sales amounted to \$863,344.00. The Audit Division reduced this to \$858,337.00 to account for New York State

inspections. Petitioner reported taxable sales of \$139,571.00 for the same period, leaving additional taxable sales of \$718,766.00 with tax due thereon of \$57,866.42. Use tax of \$200.00 was also assessed on fixed asset acquisitions of \$2,500.00 in June 1979.

5. Following a pre-hearing conference with the Tax Appeals Bureau, the Audit Division agreed that petitioner's liability should be reduced to \$50,783.50 (\$17,504.36 on notice issued August 20, 1982 and \$33,279.14 on notice issued April 27, 1983). Gasoline sales were adjusted to allow for leakage of 3 percent and repair sales were revised to \$185,625.00.

6. At the hearing, counsel for the Audit Division conceded that the use tax of \$200.00 should be cancelled.

7. Petitioner does not dispute the gasoline sales determined by the Audit Division. Petitioner argued, however, that the allowance for leakage was insufficient and the estimate for repair sales was overstated. No evidence was produced by petitioner to establish the extent of its gasoline losses during the audit period, nor did petitioner show that the repair sales were erroneous.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides that "if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the tax commission from such information as may be available" and authorizes, where necessary, an estimate of tax due "on the basis of external indices".

B. That section 1135(a) of the Tax Law provides that every person required to collect tax shall keep records of every sale and 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.

C. That petitioner provided inadequate and incomplete books and records for purposes of verifying taxable sales. Accordingly, the Audit Division's use of third party purchases and statewide average selling prices as a basis for determining petitioner's liability was proper pursuant to section 1138(a) of the Tax Law.

D. That the estimate procedures adopted by the Audit Division for repair sales were reasonable under the circumstances. When a taxpayer's recordkeeping is faulty, exactness is not required of the examiner's audit (Matter of Meyer v. State Tax Commission, 61 AD2d 223). Petitioner failed to sustain its burden of showing that the method of audit or the amount of tax assessed was erroneous (Matter of Surface Line Operators Fraternal Organization, Inc. v. State Tax Commission, 85 AD2d 858).

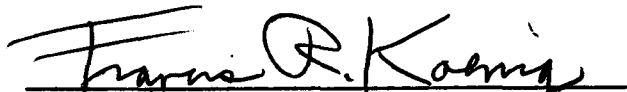
E. That the petition of Pulaski Bridge Service Station, Inc. is granted to the extent that the additional taxes due are reduced to \$50,583.50 (Findings of Fact "5" and "6"); the Audit Division is hereby directed to modify the notices of determination and demands for payment of sales and use taxes due issued August 20, 1982 and April 27, 1983; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 319 117 420

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

* U.S.G.P.C. 1985-480-794

PS Form 3800, June 1985

To: Andy Fradelakis	
Street and No. 30-07 Broadway	
P.O., State and ZIP Code Astoria, N.Y. 11106	
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 319 117 419

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
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PS Form 3800, June 1985

To: Pulaski Bridge Service Station	
Street and No. 321 McGwinness Blvd	
P.O., State and ZIP Code Brooklyn, N.Y. 11222	
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	

TA-26 (7/85)

STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

W. A. Harriman Campus

ALBANY, N.Y. 12227

NOV 8 1988

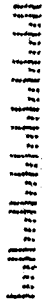
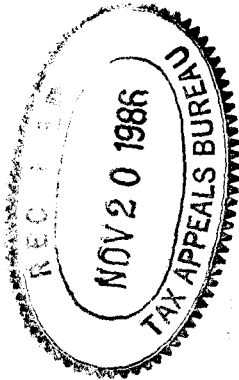
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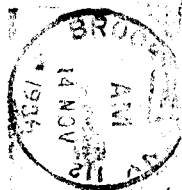
CERTIFIED

P 319 117 419

MAIL

Pulaski Bridge Service Station, Inc.
321 McGuinness Blvd.
Brooklyn, NY 11222





REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 12/3/86
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec. 10/20/86
Name Pulaski Bridge Service Station, Inc.	
Address 321 McGuinness Blvd. Brooklyn, N.Y. 11227	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by DP	Section	Date of Search 12/3/86
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

October 20, 1986

Pulaski Bridge Service Station, Inc.
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Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Andy Fradelakis
30-07 Broadway
Astoria, NY 11106

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

PULASKI BRIDGE SERVICE STATION, INC.

DECISION

for Revision of a Determination or for Refund
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DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986

Rodrick W. Chen
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Daulton
COMMISSIONER