

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Remster 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 3/1/81 - 8/31/82.
_____ :

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 Remster Service Station, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Remster Service Station, Inc.
972 Remsen Avenue
Brooklyn, New York 11236

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.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Remster Service Station, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
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under Article(s) 28 & 29 of the Tax Law for the :
Period 3/1/81 - 8/31/82.
:

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 served the within notice of Decision by certified mail upon William T. Barbera, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William T. Barbera
111 Wolf's Lane
Pelham, NY 10803

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
20th day of October, 1986.

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

Janet M. Snay

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

October 20, 1986

Remster Service Station, Inc.
972 Remsen Avenue
Brooklyn, New York 11236

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:
William T. Barbera
111 Wolf's Lane
Pelham, NY 10803

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
REMSTER 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 March 1, 1981	:	
through August 31, 1982.	:	

Petitioner, Remster Service Station, Inc., 972 Remsen Ave., Brooklyn, New York 11236, 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 March 1, 1981 through August 31, 1982 (File No. 54884).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1986 at 11:00 A.M., with all briefs to be submitted by July 11, 1986. Petitioner appeared by William T. Barbera, Esq. The Audit Division appeared by John P. Dugan, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined sales and use taxes due from petitioner.

FINDINGS OF FACT

1. On June 20, 1984, the Audit Division issued against petitioner, Remster Service Station, Inc., a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing a tax liability of \$114,770.00 plus penalty of \$28,692.50 and interest of \$37,103.91 for a total of \$180,566.41 for the period March 1, 1981 through August 31, 1982.

2. By letter dated February 14, 1984, the Audit Division informed petitioner that an audit of its State tax returns was being conducted and requested that petitioner respond to a questionnaire and provide a copy of certain Federal tax returns. A follow-up letter was sent to petitioner on or about March 21, 1984. No reply was received to either letter.

3. Because no other information was available, the Audit Division resorted to external indices to determine sales taxes due. Petitioner's gasoline supplier, Sun Oil Co. ("Sun"), provided the Audit Division with a computer printout of records, showing gasoline purchases by petitioner for the months of September, October and November 1980. Total gallons purchased from Sun in that period were multiplied by an average retail selling price of \$1.25 per gallon to determine audited gross sales for the period of \$216,224.00. Reported sales of \$33,234.00 were subtracted from audited sales to obtain additional taxable sales of \$182,990.00. An error rate of 550.6 percent was calculated by dividing additional taxable sales by reported taxable sales. Taxable sales reported by petitioner for each quarterly period under consideration were increased by this error rate to obtain audited taxable sales for the entire audit period. The sales tax due on audited taxable sales decreased by the sales tax paid resulted in additional tax due of \$114,770.00.

4. Petitioner strenuously objected to the admission into evidence of computer printouts from Sun on the grounds that no one from Sun was present to authenticate those records or to testify to their reliability. No evidence was presented in support of the petition.

CONCLUSIONS OF LAW

A. That in light of petitioner's failure to respond to the Audit Division's questionnaire or to make available any records from which its reported sales

could be verified, the Audit Division was justified in employing a test period and markup of purchases procedure to estimate petitioner's tax liability (Tax Law §1138[a][1]; Matter of Ristorante Puglia v. Chu, 102 AD2d 348,350).

Because petitioner has failed to demonstrate that either the audit method or the result arrived at were erroneous, the assessment is upheld.

B. That the petition of Remster Service Station, Inc. is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on June 20, 1984 is sustained.

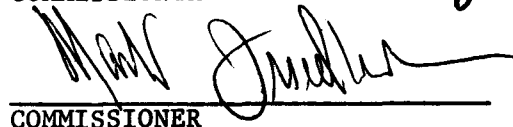
DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 319 117 421

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, June 1985

★ U.S.G.P.O. 1985-480-794

To Remster Service Station Inc.	
Street and No. 972 Remsen Ave.	
City, State and ZIP Code Brooklyn, N.Y. 11236	
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 319 117 422

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, June 1985

★ U.S.G.P.O. 1985-480-794

To William T. Barbara	
Street and No. 111 Wolf's Lane	
City, State and ZIP Code Pelham, N.Y. 10803	
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	

ST
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 Remster Service Station, Inc.	
Address 972 Remsen Avenue Brooklyn, New York 11236	

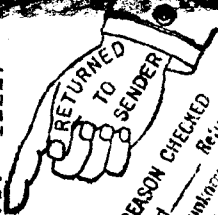
Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	Moved not forwardable

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (7/85)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
W. A. Harriman Campus
ALBANY, N.Y. 12227



RETURNED
TO SENDER

REASON CHECKED

Unclaimed

Addressee unknown

Insufficient Address

No such street

No such office in state

Do not re-mail in this envelope

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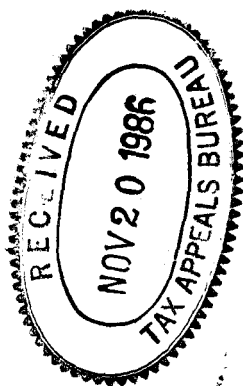
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STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 20, 1986

Remster Service Station, Inc.
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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:
William T. Barbera
111 Wolf's Lane
Pelham, NY 10803

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CONCLUSIONS OF LAW

A. That in light of petitioner's failure to respond to the Audit Division's questionnaire or to make available any records from which its reported sales

could be verified, the Audit Division was justified in employing a test period and markup of purchases procedure to estimate petitioner's tax liability (Tax Law §1138[a][1]; Matter of Ristorante Puglia v. Chu, 102 AD2d 348,350).

Because petitioner has failed to demonstrate that either the audit method or the result arrived at were erroneous, the assessment is upheld.

B. That the petition of Remster Service Station, Inc. is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on June 20, 1984 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 20 1986

Rodolph A. Chu
PRESIDENT

Francis P. Koenig
COMMISSIONER

Mark J. Miller
COMMISSIONER