

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frank Sandler : AFFIDAVIT OF MAILING
d/b/a Sandy's American Service Center

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 - 8/31/82.

State of New York :

ss.:

County of Albany :

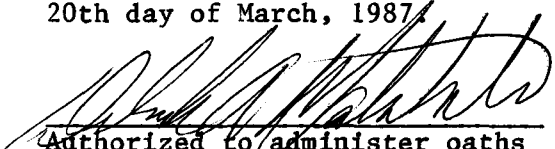
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of March, 1987, he/she served the within notice of decision by certified mail upon Frank Sandler, d/b/a Sandy's American Service Center the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frank Sandler
d/b/a Sandy's American Service Center
68 Caffrey Avenue
Bethpage, NY 11714

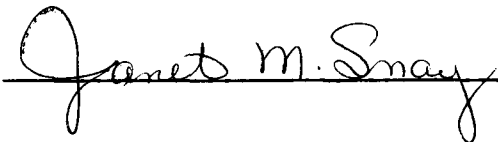
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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 March, 1987



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 :
Frank Sandler : AFFIDAVIT OF MAILING
d/b/a Sandy's American Service Center :

for Redetermination of a Deficiency or Revision :
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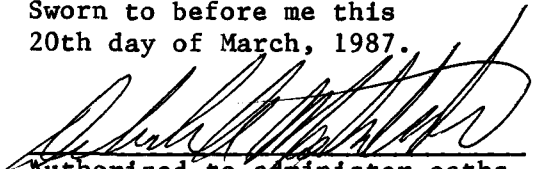
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of March, 1987, he served the within notice of decision by certified mail upon Peter R. Newman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

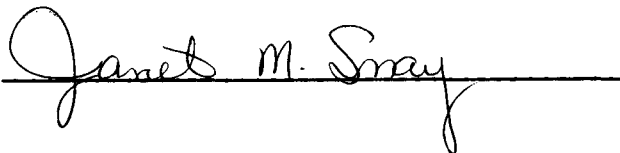
Peter R. Newman
350 Veterans Memorial Hwy.
Commack, NY 11725

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 March, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

March 20, 1987

Frank Sandler
d/b/a Sandy's American Service Center
68 Caffrey Avenue
Bethpage, NY 11714

Dear Mr. Sandler:

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:
Peter R. Newman
350 Veterans Memorial Hwy.
Commack, NY 11725

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK SANDLER	:	DECISION
D/B/A SANDY'S AMERICAN SERVICE CENTER	:	
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 August 31, 1982.	:	

Petitioner, Frank Sandler d/b/a Sandy's American Service Center, 68 Caffrey Avenue, Bethpage, New York 11714 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 August 31, 1982 (File No. 46821).

A hearing was commenced before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 29, 1986 at 9:15 A.M., continued on May 14, 1986 at 10:00 A.M. and concluded on September 10, 1986 at 9:15 A.M., with all briefs to be submitted by December 12, 1986. Petitioner appeared by Peter R. Newman, Esq. The Audit Division appeared by John P. Dugan, Esq. (Joseph W. Pinto, Esq., and Michael Glannon, Esq. of counsel).

ISSUES

I. Whether any part of the assessment is barred by the statute of limitations found in section 1147(b) of the Tax Law.

II. Whether the Audit Division properly employed estimated purchase and purchase markup procedures to calculate tax due on petitioner's sales of gasoline and repair services.

FINDINGS OF FACT

1. On July 26, 1983, following a field audit, the Audit Division issued to petitioner, Frank Sandler d/b/a Sandy's American Service Center, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, assessing sales taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1979 through August 31, 1982 in the amount of \$49,843.41 plus penalties and interest.

2. On July 19, 1982, Mr. Sandler executed a consent extending the period of limitation for the assessment of sales and use taxes for the taxable period June 1, 1979 through May 31, 1980 to September 20, 1983.

3. An auditor visited the service station in May 1982 and had several contacts with Mr. Sandler and his accountant in an attempt to obtain books and records. The documents made available were deemed inadequate to verify taxable sales because no invoices were maintained for sales of repair services, purchase invoices were incomplete and petitioner's general ledger could not be reconciled with his Federal income tax returns.

4. In calculating the assessment under consideration, the auditor employed a markup test of gasoline purchases and an estimate of sales of repair services.

a. The auditor obtained petitioner's gasoline purchases from his suppliers. Using the supplier's cost figures and petitioner's posted pump prices, the auditor calculated an average weighted markup per gallon of 12.97 percent. This markup figure was applied to petitioner's gasoline purchases to determine total taxable gasoline sales. Appropriate adjustments were made to remove from the selling price of gasoline sales and excise taxes not taxable under Articles 28 & 29.

b. Utilizing petitioner's cash disbursements journal the auditor estimated that for the period June 1979 through November 1979 petitioner's

purchases of repair parts amounted to approximately nine percent of his gasoline purchases. The auditor then estimated petitioner's parts purchases for the audit period using the nine percent figure and applied a markup of 125 percent to parts purchases to determine audited repair sales. The markup figure was based on the auditor's personal experience of auditing gasoline stations in Nassau County.

c. Using the methodology described, the auditor calculated additional taxes due from petitioner as follows:

Taxable gasoline sales	\$1,567,953
Sales of repair services	<u>103,139</u>
Total taxable sales	1,671,092
Taxable sales reported	<u>974,892</u>
Additional taxable sales	710,586
 Additional sales tax due	 \$49,843.41

5. Mr. Sandler had an agreement with his supplier whereby he paid for the amount of gasoline he actually pumped, as shown on his meters, rather than the amount of gasoline delivered to his station. He took daily meter readings from each pump and reported the results to his supplier. Petitioner was given the opportunity to submit a summary of his daily meter readings after the close of the hearing, but he failed to do so.

CONCLUSIONS OF LAW

A. That petitioner's failure to provide verifiable records made it impossible to determine his tax liability without resort to external indices; therefore, the Audit Division was warranted in employing outside indices to estimate taxable sales (Tax Law §1138[a][1]).

B. That the audit methodology was reasonable, and petitioner has not shown that either the method or the results were erroneous (Surface Line Operators Fraternal Organization, v. Tully, 85 AD2d 858).

C. That the consent executed on July 19, 1982 was effective only for those periods which had not yet expired (Tax Law §1147[c]). The period of limitation for the assessment of sales and use taxes for the sales tax quarter ended August 31, 1979 expired on September 20, 1982. Accordingly, the consent was executed before the period for assessment had expired, and the notice was issued timely.

D. That the petition of Frank Sandler d/b/a Sandy's American Service Center is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes due issued on July 26, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 20 1987

Rodwick W. Allen
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Trudell
COMMISSIONER