

REQUEST FOR BETTER ADDRESS

Requested by 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  8/14/87
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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. 6/25/87
Name Louis A. Vargas	
Address 90-10 Springfield Blvd. Queens Village, N. Y. 11429	

## 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 J. Snay	Section Hearing	Date of Search 8/21/87
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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

107



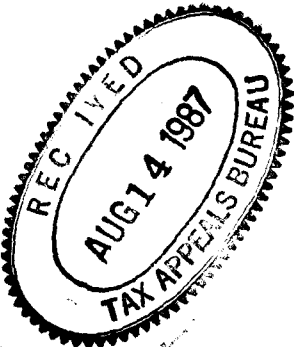
REASON  
Unclaimed  
Addressed  
Insufficient funds  
No such street  
No such unit  
Do not remain in this envelope

**CERTIFIED**

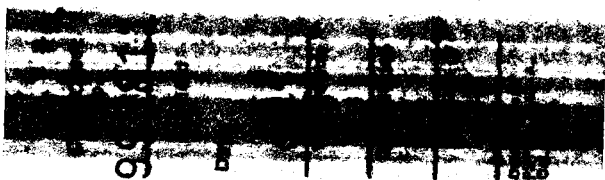
P-602 466 067

**MAIL**

Louis A. Vargas  
90-10 Springfield Blvd.  
Queens Village, NY 11429



BC



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

June 25, 1987

Louis A. Vargas  
90-10 Springfield Blvd.  
Queens Village, NY 11429

Dear Mr. Vargas:

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

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

LOUIS A. VARGAS

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, 1979  
through May 31, 1982. :

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Petitioner, Louis A. Vargas, 90-10 Springfield Boulevard, Queens Village, New York 11429, 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, 1979 through May 31, 1982 (File No. 57729).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 27, 1987 at 9:30 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

#### ISSUE

Whether an observation test properly determined the amount of taxes owed by petitioner as a partner in the partnership Jamaica Grocery Store.

#### FINDINGS OF FACT

1. Petitioner, Louis A. Vargas, together with Edilio Peralta, purchased a grocery business known as Jamaica Grocery Store, located at 195-52 Jamaica Avenue, Queens, New York, on August 29, 1978. They operated the business as a partnership.

2. On November 12, 1980, petitioner sold his interest in the store to Mr. Peralta for \$1,000.00.

3. Mr. Peralta sold the business to a third party on March 29, 1982.

4. A sales tax audit of Jamaica Grocery Store was commenced in February 1982:

(a) Records of the grocery store were determined to be inadequate.

The only records available were incomplete purchase invoices for 1981, the 1980 United States Partnership Return and a daily sales book for 1981. The daily sales book had two entries labeled "March 3", thereby giving that month 32 days. Accordingly, the daily sales book was given no credibility by the auditor.

(b) It was noted that the sales per the above-mentioned daily sales book for 1981 disagreed with the sales tax returns. The total sales per the daily sales book for the period March 1 through November 30, 1981 were \$66,596.00, while the sales tax returns for the same period reported \$60,458.00, a difference of \$6,138.00. The sales per daily sales book were not supported by cash register tapes.

(c) A six and one-half hour observation test was made at the store on Monday, May 10, 1982, which revealed taxable sales of \$263.83 and nontaxable sales of \$129.02, for a total of \$392.85. Since the store was open thirteen hours per day, these amounts were multiplied by two, resulting in \$785.70 in sales for the entire day. This figure was projected over the audit period and resulted in audited gross sales of \$883,126.80. The day of the observation test was sunny and was considered to be a representative day. Taxable sales of \$263.83 were reduced by applicable excise and sales tax on cigarettes, for net audited taxable sales of \$247.61. This figure was multiplied by two and projected over the audit period to result in taxable sales of \$556,627.28. Taxable sales reported over the audit period were \$47,731.00.

(d) On June 16, 1982, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period March 1, 1979 through March 29, 1982 was issued to petitioner, Louis A. Vargas, partner of Jamaica Grocery Store, in the amount of \$41,280.91 in total tax due, with \$7,901.63 in total penalty due, plus interest.

(e) At a conference, the Audit Division agreed to adjust sales for inflation as follows: sales for 1979 were reduced by 45 percent; sales for 1980 by 30 percent; and sales for 1981 by 15 percent.

(f) Audited taxes due were reduced to \$29,457.07, which amount included taxes on \$5,000.00 in fixed assets sold in bulk (estimated) and \$1,500.00 in fixed assets purchased in bulk during the audit period.

(g) The taxable percentage of gross sales revealed by the observation of the premises was 63.03 percent. The field audit report indicated that taxable purchases were 61.19 percent of total purchases. However, according to those field audit papers in the record, taxable purchases were 53.47 percent of total purchases.

5. Due to differences in business operations between the period at issue and the date of the observation test, which was performed under new ownership,<sup>1</sup> the correct taxable percentage of sales is to be based on the available purchase invoices and is hereby found to be 53.47 percent.

#### CONCLUSIONS OF LAW

A. That Tax Law § 1138(a)(1) provides, in pertinent part, as follows:

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<sup>1</sup> For example, the new owner introduced the sale of sandwiches, which are taxable items.

"If a return required by this article is not filed, or 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. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors."

B. That where a taxpayer's records are incomplete or insufficient, the Audit Division may select a method reasonably calculated to reflect the sales and use taxes due and the burden then rests upon the taxpayer to demonstrate by clear and convincing evidence that the method of audit or the amount of tax assessed was erroneous (Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 AD2d 858).

C. That the records of Jamaica Grocery Store were incomplete and it was proper for the Audit Division to estimate sales based on a record of the actual sales made during a physical observation of the premises. However, petitioner sustained his burden of proof to show that business operations during the period at issue were different from those under the ownership at the time the observation test was performed. Accordingly, the taxable percentage is to be reduced to 53.47 percent, as per Finding of Fact "5".

D. That petitioner ceased being a partner in Jamaica Grocery Store as of November 12, 1980 and taxes due on sales made subsequent to that date may not be assessed against him.





E. That the petition of Louis A. Vargas is granted to the extent set forth in Conclusions of Law "C" and "D" and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 16, 1982, as adjusted (Finding of Fact "4[f]"), is to be further reduced in accordance therewith. Except as so modified, the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is sustained.

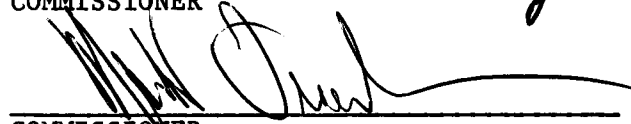
DATED: Albany, New York

STATE TAX COMMISSION

JUN 25 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Louis A. Vargas :

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 3/1/79-5/31/82.  
:

State of New York :

ss.:

County of Albany :

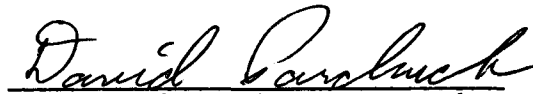
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 25th day of June, 1987, he/she served the within notice of Decision by certified mail upon Louis A. Vargas the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

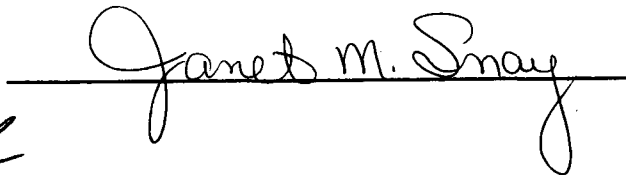
Louis A. Vargas  
90-10 Springfield Blvd.  
Queens Village, NY 11429

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  
25th day of June, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

June 25, 1987

Louis A. Vargas  
90-10 Springfield Blvd.  
Queens Village, NY 11429

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Audit Evaluation Bureau  
Assessment Review Unit  
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Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

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In the Matter of the Petition

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DATED: Albany, New York

STATE TAX COMMISSION

JUN 25 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER