

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ANTHONY MARENO	:	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, 1981.	:	

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Petitioner, Anthony Mareno, 209 Princeton Avenue, Staten Island, New York 10306, 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, 1981 (File No. 54957).

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 December 2, 1985 at 1:15 P.M. Petitioner appeared by Raymond L. Liebman, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether petitioner timely applied for a hearing.

#### FINDINGS OF FACT

1. On June 18, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Anthony Mareno, covering the period March 1, 1979 through May 31, 1981 for taxes due of \$35,266.94, plus fraud penalty of \$17,633.50 and interest of \$8,394.74, for a total of \$61,295.18. Said notice was sent certified mail, however, it was returned undeliverable indicating the addressee had moved and left no forwarding address.

2. On June 21, 1982, the above notice was remailed to petitioner at 209 Princeton Avenue, Staten Island, New York 10306. This notice was also sent certified mail. The postal receipt was returned with the signature of petitioner and showed June 21, 1982 as the date of delivery.

3. The earliest correspondence received by the Audit Division from petitioner which could be construed as a petition for a hearing was a letter dated August 4, 1983.

4. Petitioner denied receipt of the notice dated June 21, 1982. He alleged that he first became aware of the notice after a warrant was filed and a Tax Compliance agent contacted him for payment.

#### CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in pertinent part, that a notice of determination of tax due shall be given to the person liable for the collection or payment of the tax, and such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the Tax Commission for a hearing.

B. That section 1147(a)(1) of the Tax Law provides that a notice of determination shall be mailed promptly by registered or certified mail. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. The mere denial of receipt does not overcome this presumption. Any period of time which is determined according to the provisions of Article 28 by the giving of notice shall commence to run from the date of mailing of such notice.

C. That the Audit Division gave petitioner notice of the additional taxes due on June 21, 1982. Petitioner did not timely file a protest to such notice

or make application for a hearing with respect thereto until August 4, 1983. Accordingly, petitioner's liability was finally and irrevocably fixed.

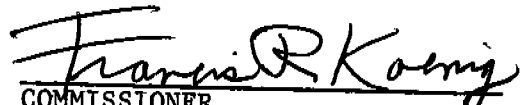
D. That the petition of Anthony Mareno is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 21, 1982 is sustained.

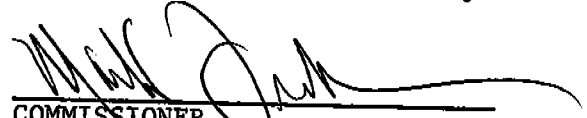
DATED: Albany, New York

MAY 08 1986.

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER