

BUREAU OF LAW

MEMORANDUM

A. Z
Route 110 Pizza Parlor, Inc.

TO: State Tax Commission

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: Route 110 Pizza Parlor, Inc.;
Application to review determination
assessing Sales Tax under Article 28
of the Tax Law for the period August 1,
1965 through January 31, 1967

A hearing on the above matter was held before me at 80 Centre Street, January 7, 1969.

At issue is the validity of estimated assessments against the above-named taxpayer issued after notice of bulk sale.

Taxpayer operated a pizza parlor at Walt Whitman Shopping Center, Huntington Station, New York from prior to August 1, 1965 to January 31, 1967.

Taxpayer failed to file a sales tax return for the one month period ended August 31, 1965 and a notice of delinquency was issued October 29, 1965. A notice of assessment No. 9070912, in the amount of \$119.65 was issued January 9, 1967 and was not paid. Returns were filed for the periods ended November 30, 1965, February 28, 1966 and May 31, 1966. No returns were filed for the periods ending August 31, 1966 and November 30, 1966. A return for the period December 1, 1966 to January 31, 1967 was not filed until August 18, 1967.

Bulk sale notice on form ST-274, dated March 1, 1967 and stamped as having been received in the Sales Tax Bureau, March 31, 1967 states that Vitsura Pizza, Inc. is acquiring Route 110 Pizza Parlor, Inc. January 31, 1967 for a total sales price of \$37,200.00. The fixtures, furniture and equipment which was included were valued at \$6,200.00.

Notices of possible claims were mailed to both seller and purchaser by the Sales Tax Bureau May 12, 1967. No response was received. Efforts to have taxpayer Giordano, the principal of Route 110 Pizza Parlor, present his records for audit were unsuccessful. No attempt was made to conduct a field audit.

An assessment was prepared for the period from August 1, 1965 to date of sale, January 31, 1967 including the bulk sale. As a guide, in the absence of any books or documentation by the seller, the district office used an Italian restaurant which had been previously audited by the field unit of the district office. The sample

vendor's business had been sold for a total sales price of \$21,000.00. Recorded sales in the sample restaurant for August 1, 1965 through November 15, 1966 were \$73,971.71 which was projected to yearly sales of \$57,668.44 and divided by the sales price of \$21,000.00. A figure was obtained of approximately \$2,727.07 of average yearly sales per \$1,000.00 of selling price for this type of establishment. Multiplied by the selling price of \$37,000.00 this resulted in projected yearly sales at Route 110 Pizza Parlor, Inc. of \$100,703.00. The location of the instant vendor was much better than that of the sample, so the assessments were based upon projected sales of \$120,000.00 a year or \$10,000.00 a month. Taxpayer on the returns filed had shown taxable sales of \$2,610.00 each for two successive three month periods with a tax of \$52.20 and \$53.10, respectively, which had not been reconciled. The third report showed a tax due of \$51.40 without showing taxable sales.

After issuance of the notice of determination No. 90251366 in the total amount of \$4,105.98 on August 20, 1967, taxpayer on September 25, 1967 filed an application for revision of determination on form ST-139.

Notice of hearing scheduled for January 7, 1969 was mailed to the address of the taxpayer in the application for revision. The notice was not returned, no communication was received from the taxpayer and no one appeared on his behalf at the date of the hearing. I, therefore, proceeded to take the testimony of Joseph Gutel, Senior Tax Examiner, as to the computation of the assessment.

Based upon the foregoing I recommend that the determination of the State Tax Commission in the above matter denying the application for revision be substantially in the form submitted herewith.

/s/

VINCENT P. MOLINEAUX

Hearing Officer

VPM:dv

Enc.

February 6, 1969

Sent to Commission 3/4/69

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION
OF
ROUTE 110 PIZZA PARLOR, INC.
FOR REVIEW OF A DETERMINATION ASSESSING
SALES TAX UNDER ARTICLE 28 OF THE TAX LAW
FOR THE PERIODS AUGUST 1, 1965 THROUGH
JANUARY 31, 1967

The taxpayer herein, Route 110 Pizza Parlor, Inc. having filed an application for revision of sales tax under Article 28 of the Tax Law for the period August 1, 1965 through January 31, 1967 and a hearing having been held thereon and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the applicant operated a pizza parlor at Walt Whitman Shopping Center, Huntington Station, New York from prior to August 1, 1965 until January 31, 1967.

(2) That taxpayer filed sales tax returns for the periods September 1 to November 30, 1965; December 1, 1965 to February 28, 1966; and March 1 to May 31, 1966 and failed to file sales tax returns for the periods August 1 through August 31, 1965; June 1 to August 31, 1966; September 1 to November 30, 1966 and failed to file a return for the period December 1, 1966 to January 31, 1967 until August 18, 1967.

(3) That bulk sale notice on form ST-274, dated March 1, 1967 stating that the Vitensa Pizza, Inc. is acquiring Route 110 Pizza Parlor, Inc. January 31, 1967 for a total sales price of \$37,200.00, the fixtures, furniture and equipment which are included being valued at \$6,200.00 was filed with the State Tax Commission March 31, 1967.

(4) That notices of claim were mailed by the Sales Tax Bureau to both seller and purchaser May 12, 1967 and no response was received thereto.

(5) That notice of determination No. 90251366 in the amount of \$4,105.98 was issued August 20, 1967 and taxpayer on September 25, 1967 filed an application for revision of determination on form ST-139.

(6) That notice of hearing scheduled for January 7, 1969 was mailed to the address of the taxpayer in the application for revision. The notice was not returned, no communication was received from the taxpayer and no one appeared on his behalf at the date of the hearing at which time Joseph Gutel, Senior Tax Examiner for the Sales Tax Bureau, testified that the assessment was based upon a comparison with an Italian restaurant which had been previously audited by the field unit of the district office which disclosed approximately \$2,727.07 of average yearly sales per \$1,000.00 of selling price for this type of establishment based upon which it was possible to estimate approximate sales by the taxpayer of \$1,000.00 per month. Such estimate was taken since the taxpayer failed to produce his books and records as requested.

Based upon the foregoing findings and all of the evidence presented therein, the State Tax Commission hereby

DETERMINES:

(a) That the additional sales taxes assessed in notice No. 90251366 against Route 110 Pizza Parlor, Inc. are correct and lawfully due and owing.

(b) That the taxpayer's application is hereby denied.

Dated: Albany, New York this 10th day of March, 1969.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
President

/s/

A. BRUCE MANLEY
Commissioner

/s/

MILTON KOERNER
Commissioner

Commissioner