

2262 1730
Island
Delicatessen

May 15, 1970

Mr. Vincent J. Ferrari, Esq.
163-18 Jamaica Avenue
Jamaica, New York 11432

RE: Francis J. Gaffney and
Edward A. Zurl d/b/a
Island Delicatessen

Dear Mr. Ferrari:

Your letter to the Department of Taxation and Finance, dated May 4, 1970, was referred to me for reply. As you recall, I was the hearing officer before whom you appeared on September 30, 1969, on behalf of Mr. Edward Zurl.

Our records note that a copy of the decision of the Commission was mailed to your office on February 24, 1970. We regret the fact that it may have been lost in the mails. Our records further note that a second copy of this decision was mailed to Mr. Edward Zurl on the same day.

I am including with this letter a reproduction of the decision of the State Tax Commission, dated February 24, 1970.

Very truly yours,

LAWRENCE A. NEWMAN
Hearing Officer

LAN/mw

Enclosure

1941. 12. 10

Report of the
Committee on the
State of the Union

Presented to the
House of Representatives
January 10, 1942

By the President

The President of the United States
has the honor to present to the
House of Representatives the
Report of the Committee on the
State of the Union.

The Committee on the State of the Union
has the honor to present to the
House of Representatives the
Report of the Committee on the
State of the Union.

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House of Representatives the
Report of the Committee on the
State of the Union.

Very truly yours,

FRANKLIN D. ROOSEVELT
President

1942

1942

VINCENT J. FERRARI

COUNSELOR AT LAW

(212) JAMAICA 3-3388

*163-18 Jamaica Avenue
Jamaica, N.Y. 11432*

May 4, 1970

State of New York
Department of Taxation & Finance
80 Centre Street
New York, New York

Re: Francis J. Gaffney and
Edward A. Zurl d/b/a
Island Delicatessen


Dear Sirs:

Rm 979

Would you kindly advise me of the present status of the captioned matter, and whether or not a decision has been made in connection with the hearings previously held. We have not received any notice of any decision rendered.

Thank you.

Yours very truly,


VINCENT J. FERRARI

:BAS

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO : Mr. Edward Rook

FROM : William H. Selden

SUBJECT: Approval of Credits - Sales Tax
I-R Equipment Corporation
605 Davis Street
Scranton, Pennsylvania 18505
ID No. 23-1687222
Amount of Credit - \$5,365.32

OFFICE: Sales Tax Bureau

DATE : October 14, 1970

Under the authority delegated January 17, 1967, attached is subject claim for sales tax credit.

The basis for the credit is as follows:

Credit is granted for sales tax paid twice on Ingersoll-Rand truck, Model T4W, Serial No. CL10013. Tax was paid on this truck on November 13, 1969, Receipt No. 010017C, and included in taxable sales for Clinton County on page 2 of the Sales Tax Return for period ending November 30, 1969, and paid a second time. This credit is granted under section 1139(a) of the New York State Sales and Use Tax Law.

NOTE: THIS IS A CREDIT ONLY. NO CHECK IS TO BE MAILED.

I concur with this claim which has been reviewed by the Sales Tax Audit Supervisor.

Since the amount of this credit is more than \$3,500.00, it must be approved by the State Tax Commission, i.e., more than one member. See bottom of Form ST-699 for signature lines.

This memorandum and Form ST-699 are being submitted in duplicate in order that you may retain a copy of each for your files.

Please return the entire case to Mr. Louis M. Vella, Ninth Floor, Building 8.



William H. Selden
Assistant Director
Sales Tax Bureau

Attachments

cc: Mr. Vella
Mr. Raskin

APPROVAL OF CREDITS AND REFUNDS

Name I-R Equipment Corporation	Address 605 Davis Street Scranton, Pennsylvania 18505	ID No. 23-1687222
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	Casual Sale Date Paid	Registered Sale Quarter Ended or Date Paid				Totals
		11/30/69				
REFUND (Credit)	\$	\$5,365.32	\$	\$	\$	
TOTAL 0908 Clinton County	\$		\$	\$	\$	\$ 5,365.32
TOTAL	\$		\$	\$	\$	\$

☒ No Interest☐ Interest From _____ To _____

From _____ To _____

From _____ To _____

From _____ To _____

TOTAL 0908 Clinton County ~~REFUND~~ (CREDIT)

Refund (Credit)

☐ No Interest☐ Interest From _____ To _____

From _____ To _____

From _____ To _____

From _____ To _____

TOTAL _____ REFUND (CREDIT)

TOTAL AMOUNT OF ~~REFUND~~ CREDIT. \$ **5,365.32**LESS CREDITS APPLIED TO QUARTER(S) ENDED _____ \$ **5,365.32**REFUND CHECK. . . **This is a credit. No check to be issued.** \$ **-----**

EXPLANATION Credit is granted for sales tax paid twice on Ingersoll-Rand truck, model T4W, serial number CL10013. Tax was paid on this truck on November 13, 1969, receipt #010017C, and included in taxable sales for Clinton County on page 2 of Sales Tax Return for period ending November 30, 1969, and paid a second time. This credit is granted under Section 1139(a) of the New York Sales and Use Tax Law.

APPROVAL

Prepared by (Tax Examiner) _____ Date _____

Reviewed by (Sales Tax Audit Supervisor) _____ Date _____

Approved by (Commissioner) Norman Gallman Date 10/26/70

(Commissioner) _____ Date _____

(Commissioner) Milton Koerner Date 10/21/70

Duplicate

Rec'd 10/6/70
Jed

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Island Delicatessen

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 of the
Tax Law for the (Year(s)) Periods
August 1, 1965 through January 7, 1968

State of New York
County of Albany

Janet Wright, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of February, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Vincent J.

Ferrari, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Vincent J. Ferrari, Esq.
163-18 Jamaica Avenue
Jamaica, New York

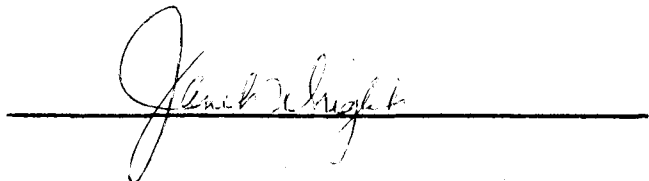
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

24th day of February, 1970.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Island Delicatessen

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 of the
Tax Law for the (Year(s)) Periods
August 1, 1965 through January 7, 1968

State of New York
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Janet Wright, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of February, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Island

Delicatessen (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

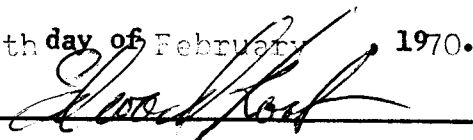
wrapper addressed as follows: Island Delicatessen
c/o Edward A. Zurl
591 South Country Road
Patchogue, New York

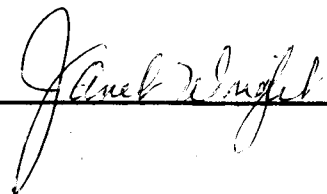
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(post office or official depository) under the exclusive care and custody of
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That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

24th day of February, 1970.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application

of

ISLAND DELICATESSEN

DETERMINATION

For Revision of a Determination or for
Refund of Sales and Use Taxes under
Article 28 of the Tax Law for the
periods August 1, 1965 through January 7,
1968.

Mr. Edward A. Zurl and Mr. Francis J. Gaffney, as former co-partners, doing business as Island Delicatessen, have each filed an application for revision of a determination or for refund of Sales and Use Taxes for the periods August 1, 1965 through January 7, 1968.

Upon notice to the applicants and their designated attorneys, a formal hearing was held before Lawrence A. Newman, Hearing Officer, at the Offices of the State Tax Commission in the City of New York on September 30, 1969. Mr. Edward Zurl was represented by Vincent J. Ferrari, Esq., and the Sales Tax Bureau was represented by Edward H. Best, Esq., (Sol Sies, Esq., of Counsel). Mr. Francis J. Gaffney failed to appear personally or through any representative.

FINDINGS OF FACT

1. The vendor, Island Delicatessen, has timely filed New York State Sales and Use Tax returns for the periods August 1, 1965 through November 30, 1967, under identification number 11-1978905. The tax returns are signed by Frank Gaffney, as partner.

2. On November 20, 1968, a Notice of Determination and Demand numbered 90,252,632 was issued against Francis J. Gaffney and Edward A. Zurl doing business as Island Delicatessen for the periods August 1, 1965 through January 7, 1968, for additional tax in the amount of \$1528.52 plus penalties and interest.

3. Edward A. Zurl and Francis J. Gaffney have each timely filed an application for revision of the determination.

4. The applicants have failed to prove that the determination made by the Sales Tax Bureau, and based upon a field audit of the books and records of Island Delicatessen, is incorrect or unlawful as to the amounts shown to be due and payable.

5. During the period August 1, 1965 through January 7, 1968, Mr. Edward A. Zurl and Mr. Francis J. Gaffney were owners and partners of a delicatessen business under the trade name of "Island Delicatessen."

DETERMINATION:

A. The Notice of Determination and Demand, dated November 20, 1968 and numbered 90,252,632, issued against Francis Gaffney and Edward Zurl, d/b/a Island Delicatessen, is correct and sustained as to the amounts of taxes and penalties, plus statutory interest to the date of payment.

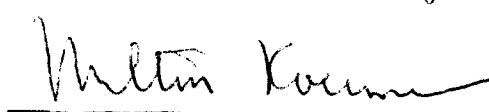
B. Mr. Edward A. Zurl and Mr. Francis J. Gaffney are each personally liable for the additional sales taxes, penalties and interest shown to be due by the Notice of Determination and Demand .

DATED: Albany, New York
February 24, 1970

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Rook
 FROM: Mr. Newman
 SUBJECT: Francis J. Gaffney and Edward Zurl
 D/B/A Island Delicatessen
 Determination sustaining Sales Tax Bureau
 as to amounts and partner's liability

DATE Jan. 16, 1970
 OFFICE Hearing Unit

1. Although the Sales Tax Examiner testified concerning the method and results of an audit of the partnership books and records, there was no evidence offered to refute the audit findings upon which the determination has been based. Therefore, the determination is sustained as to the amount of tax and penalties.

2. Mr. Edward A. Zurl claimed that he ceased to be a partner of the vendor, Island Delicatessen on November 19, 1962, prior to the period of time covered by the Determination, and was not personally liable for the additional sales taxes.

On November 19, 1962, Messrs. Zurl and Gaffney signed an agreement purporting to dissolve their existing partnership, and to allow Mr. Gaffney to continue the business as an individual, using the trade name "Island Delicatessen".

There was no evidence to show that a certificate of discontinuance had been filed with the county clerk, or that the State Liquor Authority was notified of the change of ownership.

On March 1, 1968, Messrs. Gaffney and Zurl executed a written instrument in which they were identified as "sellers" and "partners". The text of the instrument purports to ratify a prior agreement dated December 21, 1967 with two other parties, referred to as "purchasers", namely Mr. Frank Finamore and Mr. John Callegari.

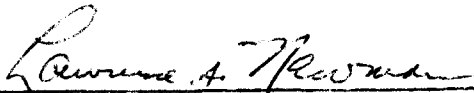
The department obtained an affidavit from Mr. Frank Finamore and an abstract follows:

"Said John Callegari and I purchased the delicatessen business formerly known as Island Delicatessen, from Francis J. Gaffney and Edward Zurl. We entered into contract to purchase the said business on December 28, 1967: and entered into possession of the business jointly with the sellers on January 8, 1968 pending the issuance of an off-premises beer license and actually closed title on March 23, 1968."

The events occurring subsequent to the written instrument dated November 19, 1962 are sufficient to refute the evidence offered that the partnership of Messrs. Gaffney and Zurl had effectively terminated prior to January 7, 1968.

Therefore, Mr. Edward Zurl remained personally liable for the debts of the partnership during the period from August 1, 1965 through January 7, 1968, the period covered by the Determination.

The determination submitted for the approval of the Commission sustains the action taken by the Sales Tax Bureau.


LAWRENCE A. NEWMAN
Hearing Officer

LAN:pc