

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CIRO FIGORITO

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~(Years)~~ Period(s)
August 1, 1965 - July 1, 1969

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

State of New York
County of Albany

Lynn Wilson, 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 25th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon CIRO FIGORITO

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

Mr. Ciro Figorito
wrapper addressed as follows: c/o Anthony F. Vietri, Esq.
32-41 Steinway Street
Long Island City, New York 11103

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

25th day of April, 1972

Rae Zimmerman

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CIRO FIGORITO

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~(Year(s))~~ Period(s)
August 1, 1965 - July 1, 1969

State of New York
County of Albany

Lynn Wilson, 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 25th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon ANTHONY F.
VIETRI, ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Anthony F. Vietri, Esq.

32-41 Steinway Street
Long Island City, New York 11103

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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known address of the (representative of the) petitioner.

Sworn to before me this

25th day of April, 1972

Rae J. [Signature]

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 25, 1972

Mr. Ciro Figorito
c/o Anthony F. Vietri, Esq.
32-41 Steinway Street
Long Island City, New York 11103

Dear Mr. Figorito:

Please take notice of the **DETERMINATION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
1136 & 1243 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
CIRO FIGORITO :
for Revision of a Determination or for : DETERMINATION
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Periods August 1, 1965 through :
July 1, 1969. :
:

Ciro Figorito applied for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods August 1, 1965 through July 1, 1969.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission, in the City of New York on December 14, 1971.

The applicant appeared and was represented by Anthony F. Vietri, Esq. The Sales Tax Bureau was represented by Edward H. Best, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

The correct percentage of total retail sales which were of taxable products and merchandise under Article 28 of the Tax Law.

FINDINGS OF FACT

1. The applicant, Ciro Figorito, filed New York State and local sales and use tax returns for the periods August 1, 1965 through July 1, 1969.
2. On October 30, 1969, the Sales Tax Bureau issued a Notice of Determination, numbered 90,762,882, in the amount of \$4,165.35, plus penalties and interest.
3. On January 27, 1970, an application for revision of the determination, and request for a hearing, were filed.

4. The applicant operated a small grocery store in a slum neighborhood. The store was open from about seven o'clock in the morning until nine o'clock at night. Among the products sold were fruits, vegetables, cold cuts, small amounts of candy, paper goods and soap. A large proportion of the sales were of beer, soda, and cigarettes.

5. Prior to August 1, 1965, during the administration of the New York City Sales Tax Law, the applicant reported 12% of his total sales as taxable. Since the effective date of the New York State and Local Sales Tax Law, the applicant reported the same percentage, and in addition, the applicable sales tax on sales of cigarettes and beer, which became taxable under the later law.

6. The Sales Tax Bureau made a detailed listing of the applicant's purchases for the months of January and July, 1968. Based on the information obtained and its auditing experience in similar businesses, the Bureau estimated that 40% of the total sales volume were in categories of taxable products. The percentage arrived at was projected over the periods in issue, and the Notice of Determination of additional sales taxes was accordingly computed and issued. The applicant sold the business and ceased his operations on July 1, 1969.

7. On July 30, 1970, an observation was made by the Sales Tax Bureau at the store premises where a business was being operated by a new owner in a manner similar to that of the applicant. The survey report concluded that an estimated 30% of total sales were of taxable products and commodities.

8. The survey report represents the most accurate estimate of the percentage of taxable sales made from the store premises by this applicant during the periods in issue.

DETERMINATION

A. The correct percentage of retail sales which were of taxable products and merchandise within the meaning and intent of Article 28 of the Tax Law is equal to thirty percent of total sales reported.

B. The Notice of Determination shall be recomputed and reduced to give effect to this determination.

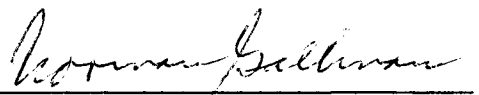
C. Penalties and interest imposed shall be reduced to simple interest at 6% per annum to date of payment.

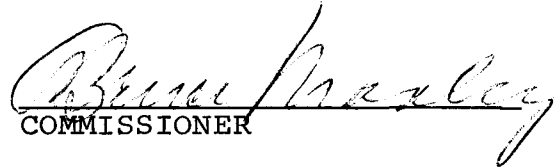
D. Subject to the modifications and reductions described in items (B) and (C) above, the Notice of Determination is sustained in part, and the application for revision of determination is granted in part.

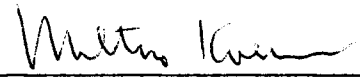
DATED: Albany, New York

April 25, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


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