

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK VILLECCO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
June 1, 1970 through May 31, 1973

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of November , 1977 , he served the within
Notice of Determination by (certified) mail upon Frank Villecco
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frank Villecco
137-12 96 Place
Ozone Park, New York 11417
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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 November , 1977.

Janet Mack

John Huhn



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

November 25, 1977

Frank Villecco
137-12 96 Place
Ozone Park, New York 11417

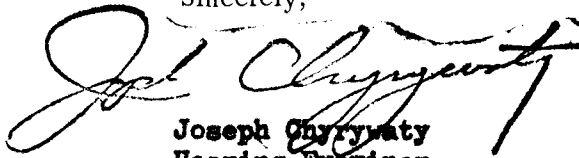
Dear Mr. Villecco:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrywaty
Hearing Examiner

cc: ~~Petitioner's Representative~~
~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| FRANK VILLECCO | : | DETERMINATION |
| 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 June 1, 1970 through May 31, | : | |
| 1973. | : | |

Applicant, Frank Villecco, 137-12 96th Place, Ozone Park, New York 11417, filed an application 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 June 1, 1970 through May 31, 1973 (File No. 10377).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 25, 1977 at 2:45 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau properly determined the applicant's sales tax liability.

FINDINGS OF FACT

1. On August 2, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Frank Villecco. This Notice was issued on the grounds that the applicant did not submit records for audit as required by section 1142 of the Tax Law.

2. Applicant, Frank Villecco, operated a plumbing and heating business from his home in Ozone Park, New York. He had no employees, nor was he a licensed plumber or electrician. He did handyman-type repair work and occasionally did capital improvement work such as remodeling a bathroom.

3. The Sales Tax Bureau attempted to audit the applicant's books and records. However, the Bureau determined that the applicant maintained no journals, ledgers or summaries, and only a portion of the sales and purchase invoices. In the absence of auditable accounting records, the Sales Tax Bureau increased the applicant's gross sales by 100%. This estimated increase in gross sales was made on the grounds that the applicant's reported income was considered to be insufficient for him to live on. The additional tax due resulting from the increase in sales was \$1,985.77, plus penalty and interest.

4. At the small claims hearing, applicant submitted sales invoices for the period December 1, 1971 through May 31, 1973 and purchase statements from one supplier for the years 1972 and 1973. He contended that these were all the records he maintained and that such records were sufficient for sales tax audit purposes.

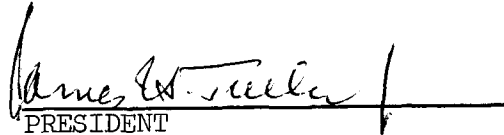
CONCLUSIONS OF LAW

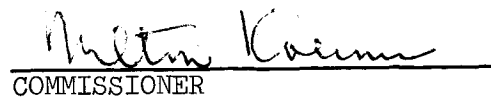
A. That the applicant did not maintain detailed records of receipts as required by section 1135 of the Tax Law, and that the Sales Tax Bureau properly determined the applicant's tax due in accordance with the provisions of Section 1138 of the Tax Law.

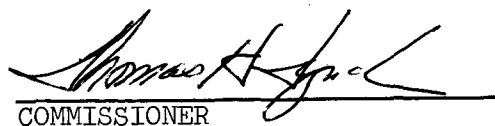
B. That the application of Frank Villecco is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 2, 1974 is sustained.

DATED: Albany, New York
November 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER