

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHARLES J. TRENTACOSTE

d/b/a C. TRENTACOSTE & SON

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) or~~ Period(s)
March 1, 1971 through August 31, 1973.

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, 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 29th day of September, 1977, she served the within
Notice of Determination by (certified) mail upon Charles J.
Trentacoste (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Charles J. Trentacoste
d/b/a C. Trentacoste & Son
1216 Nostrand Avenue
Brooklyn, New York 11225
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

29th day of September, 1977.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CHARLES J. TRENTACOSTE
d/b/a C. TRENTACOSTE & SON
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)~~ or Period(s)
March 1, 1971 through August 31, 1973.

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, 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 29th day of September, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Herman Palatnik, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Herman Palatnik, Esq.
296 River Avenue
Patchogue, 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 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

29th day of September, 1977.

Just Mack

John Huhn



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

September 29, 1977

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

Mr. Charles J. Trentacoste
d/b/a C. Trentacoste & Son
1216 Nostrand Avenue
Brooklyn, New York

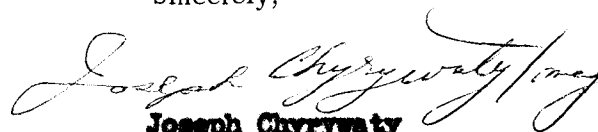
Dear Mr. Trentacoste:

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 & 2143** 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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CHARLES J. TRENTACOSTE	:	
d/b/a C. TRENTACOSTE & SON	:	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 March 1, 1971 through August 31,	:	
1973.	:	

Applicant, Charles J. Trentacoste d/b/a C. Trentacoste & Son, 1216 Nostrand Avenue, Brooklyn, New York 11225, 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 March 1, 1971 through August 31, 1973. (File No. 10359).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1977 at 2:45 P.M. Applicant appeared by Herman Palatnik, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the results of the examination by the Sales Tax Bureau of applicant's books and records for the period March 1, 1971 through August 31, 1973 properly reflected applicant's business activities.

FINDINGS OF FACT

1. During the period March 1, 1971 through June 30, 1973, applicant operated an Italian delicatessen in Brooklyn, New York. Applicant discontinued his business during the first week of July in 1973.

2. The Sales Tax Bureau conducted an examination of applicant's books and records for the period March 1, 1971 through June 30, 1973 and, as a result of said examination, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant on August 19, 1974, for tax due in the amount of \$1,662.59, plus penalty and interest of \$498.58.

3. On September 16, 1976, applicant remitted, under protest, \$2,161.17 in full payment of the aforesaid Notice of Determination.

4. Applicant's sales primarily consisted of the sale of vegetables, fruits, sandwich meats, frozen foods and various imported Italian food products. Applicant did not sell candies or cigarettes and the taxable items sold consisted mainly of soda and beer.

5. On audit, the Sales Tax Bureau determined that 20 percent of applicant's gross sales constituted taxable sales. The 20 percent taxable ratio consisted of 9.6 percent attributable to beer and soda and 10.4 percent estimated by the Sales Tax Bureau to account for other taxable items the Bureau felt applicant "must have sold".

6. The Sales Tax Bureau's audit was performed several months after the applicant had discontinued business, and the auditor did not actually observe the conduct of said business. The Sales Tax Bureau's determination that 10.4 percent of gross sales was attributable to taxable items applicant "must have sold" was not supported by external indices or other factors.

7. On the basis of evidence presented at the hearing, applicant's taxable ratio was 13 percent for the period March 1, 1971 through June 30, 1973.

CONCLUSIONS OF LAW

A. That the 20 percent taxable ratio determined by the Sales Tax Bureau is reduced to 13 percent.

B. That the Sales Tax Bureau is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 19, 1974, so as to reflect the aforesaid reduction of the taxable ratio.

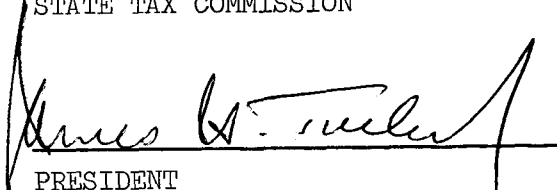
C. That the penalty is waived and interest at the minimum statutory rate is to be applied to any additional tax due.

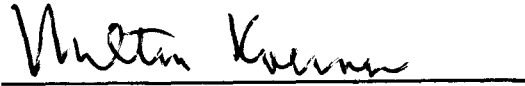
D. That the application of Charles J. Trentacoste, d/b/a C. Trentacoste and Son, is granted to the extent indicated in Conclusions of Law "A", "B" and "C", and is in all other respects denied.

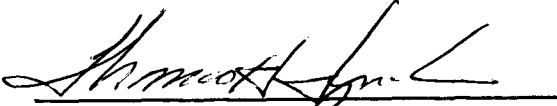
DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CHARLES J. TRENTACOSTE
d/b/a C. TRENTACOSTE & SON

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 and 29 of the
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~
March 1, 1971 through August 31, 1973.

State of New York
County of Albany

John Huhn, 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 11 day of October, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Charles J.
Trentacoste d/b/a C. Trentacoste & Son
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Charles J. Trentacoste
d/b/a C. Trentacoste & Son
2510 E. 65th Street
Brooklyn, New York 11225
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)~~
~~XXXXX~~ 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

11 day of October, 1977

Janet Mack

John Huhn

STATE CLAIMS

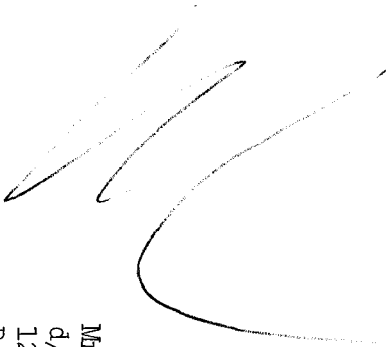
STATE OF NEW YORK

Department of Taxation and Finance

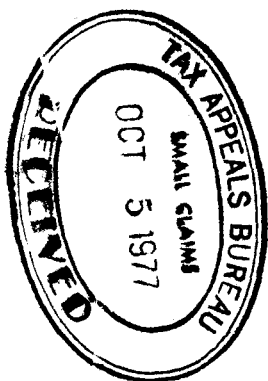
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Mr. Charles J. Trentacoste
d/b/a C. Trentacoste & Son
1216 Nostrand Avenue
Brooklyn, New York 11225



2510 E. 65th
Brooklyn, N.Y. 11225



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

September 29, 1977

REMAILED: October 11, 1977

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

Mr. Charles J. Trentacoste
d/b/a C. Trentacoste & Son
1216 Nostrand Avenue
Brooklyn, New York

Dear Mr. Trentacoste:

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 & 2143 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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

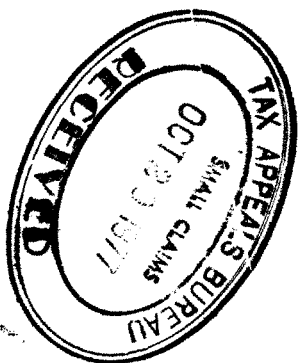
Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Charles J. Trentacoste
d/b/a C. Trentacoste & Son
2510 E. 65th Street
Brooklyn, New York 11225



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CHARLES J. TRENTACOSTE	:	
d/b/a C. TRENTACOSTE & SON	:	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 March 1, 1971 through August 31,	:	
1973.	:	

Applicant, Charles J. Trentacoste d/b/a C. Trentacoste & Son, 1216 Nostrand Avenue, Brooklyn, New York 11225, 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 March 1, 1971 through August 31, 1973. (File No. 10359).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1977 at 2:45 P.M. Applicant appeared by Herman Palatnik, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the results of the examination by the Sales Tax Bureau of applicant's books and records for the period March 1, 1971 through August 31, 1973 properly reflected applicant's business activities.

FINDINGS OF FACT

1. During the period March 1, 1971 through June 30, 1973, applicant operated an Italian delicatessen in Brooklyn, New York. Applicant discontinued his business during the first week of July in 1973.

2. The Sales Tax Bureau conducted an examination of applicant's books and records for the period March 1, 1971 through June 30, 1973 and, as a result of said examination, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant on August 19, 1974, for tax due in the amount of \$1,662.59, plus penalty and interest of \$498.58.

3. On September 16, 1976, applicant remitted, under protest, \$2,161.17 in full payment of the aforesaid Notice of Determination.

4. Applicant's sales primarily consisted of the sale of vegetables, fruits, sandwich meats, frozen foods and various imported Italian food products. Applicant did not sell candies or cigarettes and the taxable items sold consisted mainly of soda and beer.

5. On audit, the Sales Tax Bureau determined that 20 percent of applicant's gross sales constituted taxable sales. The 20 percent taxable ratio consisted of 9.6 percent attributable to beer and soda and 10.4 percent estimated by the Sales Tax Bureau to account for other taxable items the Bureau felt applicant "must have sold".

6. The Sales Tax Bureau's audit was performed several months after the applicant had discontinued business, and the auditor did not actually observe the conduct of said business. The Sales Tax Bureau's determination that 10.4 percent of gross sales was attributable to taxable items applicant "must have sold" was not supported by external indices or other factors.

7. On the basis of evidence presented at the hearing, applicant's taxable ratio was 13 percent for the period March 1, 1971 through June 30, 1973.

CONCLUSIONS OF LAW

A. That the 20 percent taxable ratio determined by the Sales Tax Bureau is reduced to 13 percent.

B. That the Sales Tax Bureau is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 19, 1974, so as to reflect the aforesaid reduction of the taxable ratio.

C. That the penalty is waived and interest at the minimum statutory rate is to be applied to any additional tax due.

D. That the application of Charles J. Trentacoste, d/b/a C. Trentacoste and Son, is granted to the extent indicated in Conclusions of Law "A", "B" and "C", and is in all other respects denied.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER