

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LOUIS N. PICCIANO, as administrator:
of the estate of LOUIS N. PICCIANO, SR.,
d/b/a LOUIS N. PICCIANO AND 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)~~ Period(s) :
December 1, 1972 to November 30, 1975.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor , 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 7th day of June , 1977, he served the within
Notice of Determination by ~~(certified)~~ mail upon Louis N. Picciano
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Louis N. Picciano, Administrator of the
Estate of Louis N. Picciano, Sr.
d/b/a Louis N. Picciano and Son
1204 Witherill Street
Endicott, New York 13760
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)~~
~~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

7th day of June , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 7, 1977

TELEPHONE: (518) **457-1723**

✓
Louis N. Picciano, Administrator of the
Estate of Louis N. Picciano, Sr.
d/b/a Louis N. Picciano and Son
1204 Witherill Street
Endicott, New York 13760

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

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

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

Very truly yours,

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: ~~Enclosed for representation:~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
LOUIS N. PICCIANO, as administrator	:	
of the estate of LOUIS N. PICCIANO, SR.,	:	DETERMINATION
d/b/a LOUIS N. PICCIANO AND SON	:	
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 December 1, 1972 to November 30,	:	
1975.	:	

Applicant, Louis N. Picciano, as administrator of the estate of Louis N. Picciano, Sr., d/b/a Louis N. Picciano and Son, 1204 Witherill Street, Endicott, New York, 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 December 1, 1972 through November 30, 1975.

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, Binghamton, New York, on October 19, 1976 at 9:15 A.M. Applicant appeared by Victor J. Mastronardi, controller. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the applicant's lump-sum capital improvement contract with New York State was sufficiently amended by a "change order," so as to change such contract to a furnish and install contract.

FINDINGS OF FACT

1. Applicant, Louis N. Picciano, as administrator of the estate of Louis N. Picciano, Sr., d/b/a Louis N. Picciano and Son, filed New York State and local sales and use tax returns for the period December 1, 1972 through November 30, 1975.

2. On April 7, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes due against applicant for the period December 1, 1972 through November 30, 1975. The tax due of \$1,455.52 under Notice No. 90,758,617 was determined per a field audit.

3. On audit, the Sales Tax Bureau determined that an agreement entered into on May 2, 1973 by and between the State of New York Health and Mental Hygiene Facilities Improvement Corporation and applicant, to furnish the material and perform the labor necessary for the installation of a heating and ventilation system for the Delaware County Nursing Home for the sum of \$146,850.00, was a lump-sum capital improvement contract. They also determined that the applicant did not pay a sales tax on the materials incorporated into this project, and, accordingly, assessed the applicant for the unpaid tax in the sum of \$1,455.52.

4. On September 13, 1973, applicant and the State of New York Health and Mental Hygiene Facilities Improvement Corporation signed a "change order" which reduced the original agreement dated May 2, 1973 by \$1,899.00. This amount represented the sales tax which was included in the original contract price. The purpose

of this change order was to change the unit price provision in the original agreement and make such agreement a furnish and install contract.

CONCLUSIONS OF LAW

A. That the "change order" agreement between applicant, Louis N. Picciano, as administrator of the estate of Louis N. Picciano, Sr., d/b/a Louis N. Picciano and Son, and New York State Health and Mental Hygiene Facilities Improvement Corporation sufficiently amended the original contractual agreement, changing the contract from a lump-sum capital improvement contract to a furnish and install contract.

B. That the applicant purchased tangible personal property for use in erecting a structure of an organization described in section 1116(a) of the Tax Law; that such property became an integral component part of such structure and was resold to such organization as tangible personal property prior to becoming a part of such structure; and that these purchases are exempt within the meaning and intent of section 1115(a)(15) of the Tax Law.

C. That the application of Louis N. Picciano, as administrator of the estate of Louis N. Picciano, Sr., d/b/a Louis N. Picciano

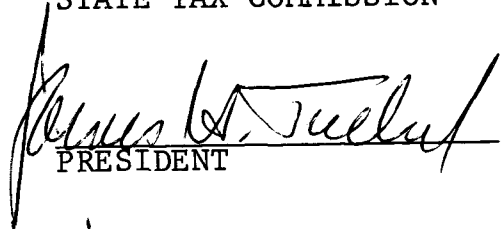
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and Son, is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 7, 1976 is cancelled.

DATED: Albany, New York

June 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER