

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GROSS & GROSS (Seller)

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 ~~XXXXXX~~ Period(s)
August 1, 1965 through August 31, 1968.

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within Notice of Determination by ~~certified~~ mail upon Harold B. Bonime

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Harold B. Bonime, CPA
170 Broadway
New York, New York 10038

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
26th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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Gross & Gross
c/o Harold B. Bonime, CPA
170 Broadway
New York, New York 10038
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.

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Sworn to before me this
26th day of August, 1977.

Marsina Donnini

Janet Muck



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

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

August 26, 1977

Gross & Gross
c/o Harold B. Bonime, CPA
170 Broadway
New York, New York 10038

Gentlemen:

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,

Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
GROSS & GROSS (Seller) : 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 Periods August 1, 1965 through :
August 31, 1968. :

Petitioner, Gross & Gross, c/o Harold B. Bonime, CPA,
160 Broadway, New York, New York 10038, 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 periods
August 1, 1965 through August 31, 1968 (File No. 01126).

A formal hearing was held before Edward L. Johnson, Hearing
Officer, at the offices of the State Tax Commission, Two World
Trade Center, New York, New York on September 17, 1976. Peti-
tioner appeared by Harold B. Bonime, CPA. The Sales Tax Bureau
appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

Whether the amount of the assessment of additional tax made
by the Sales Tax Bureau, was properly determined.

FINDINGS OF FACT

1. On November 20, 1969, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Gross & Gross, imposing additional tax due in the total sum of \$9,659.59, including penalty and interest, for the period August 1, 1965 through August 31, 1968. On December 1, 1970, the Sales Tax Bureau issued form ST-571 to petitioner, modifying this amount to \$6,344.41.

2. The determination of additional tax due was based on an audit of petitioner's books and records conducted by an examiner from the Sales Tax Bureau.

3. Petitioner, Gross & Gross, operated a luncheonette until June 30, 1968. The business was closed from July 1, 1968 until August 31, 1968 at which time it was sold. The luncheonette's trade consisted of the sale of food items such as sandwiches, coffee and cake, together with the sale of non-food items such as cigarettes and soda.

4. The petitioner's gross sales for the period, as agreed to by both parties, totaled \$334,172.66.

5. The sale of non-food items subject to tax accounted for 17% of petitioner's gross sales.

6. The sale of food items at a cost in excess of \$1.00 accounted for 5% of applicant's gross sales.

7. The tax of \$75.00 due as a result of the bulk sale of the business effective August 31, 1968, was not paid.

8. The petitioner acted in good faith and relied on the advice of his accountant.

CONCLUSIONS OF LAW

A. That the petitioner has failed to disprove the correctness of the audit conducted in accordance with section 1138(a) of the Tax Law by the Sales Tax Bureau, or of the resulting findings and computations indicating that 17% of petitioner's gross sales were of non-food items subject to tax under section 1105(a) of the Tax Law.

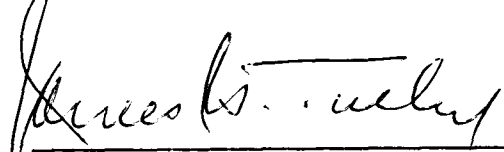
B. That the petitioner has also failed to prove that more than 95% of petitioner's gross sales were of items worth \$1.00 or less and were thus exempt from tax under former section 1105(d)(i) of the Tax Law.

C. That the application of Gross & Gross is granted to the extent that the taxable percentage of gross sales is limited to a total of 22%, and that the interest, in excess of the minimum interest, and the penalty imposed pursuant to section 1145(a) of the Tax Law be waived.

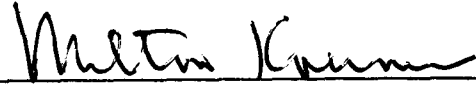
D. That the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 3, 1970; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
August 26, 1977

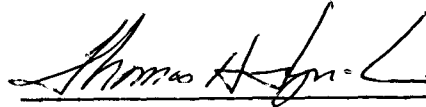
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER