

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GUIDO LOMBARDO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
September 1, 1967 through August 31, 1968.

State of New York
County of Albany

Catherine Steele, 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 15th day of September, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Guido Lombardo

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Guido Lombardo
1552 Chili Avenue
Rochester, 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)~~
~~xxxxxx~~ 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

15th day of September, 1976.

Catherine Steele

Janet Trush



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

September 15, 1976

TELEPHONE: (518) **457-3850**

Mr. Guido Lombardo
1552 Chili Avenue
Rochester, New York

Dear Mr. Lombardo:

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

Please take further notice that pursuant to
Section(s) **1139 & 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,

Paul E. Coburn
Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
GUIDO LOMBARDO : DETERMINATION
for a Revision of a Determination or :
for Refund of Sales and Use Taxes :
under Articles 28 and 29 of the Tax :
Law for the Period September 1, 1967 :
through August 31, 1968. :

Applicant, Guido Lombardo, 1552 Chili Avenue, Rochester, New York,
applied for a revision of a determination or for refund of sales and use taxes
under Articles 28 and 29 of the Tax Law for the period September 1, 1967
through August 31, 1968.

A formal hearing was held at the offices of the State Tax Commission,
1 Marine Midland Plaza, Rochester, New York, on March 15, 1973, at 3:00 P.M.
before L. Robert Leisner, Hearing Officer. The applicant appeared pro se,
and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Francis
X. Boylan, Esq. of counsel).

ISSUE

Was the applicant, Guido Lombardo, entitled to a refund of sales tax
paid on account of an overpayment of such sales tax?

FINDINGS OF FACT

1. Applicant, Guido Lombardo, operated a furniture store known as the Lombardo Furniture Company for approximately ten years. The applicant terminated the activities of this concern as of December 1, 1968.

2. The applicant, Guido Lombardo, filed timely New York State sales and use tax returns from the imposition of said tax until the termination of the business activities of Lombardo Furniture Company.

These returns are summarized below:

<u>For the Period Ending</u>	<u>Tax Due</u>
1. 8/31/65	\$ 72.10
2. 11/30/65	783.55
3. 2/28/66	1,102.97
4. 5/31/66	813.14
5. 8/31/66	1,431.04
6. 11/30/66	1,152.91
7. 2/28/67	974.99
8. 5/31/67	853.73
9. 8/31/67	791.28
10. 11/30/67	691.55
11. 2/29/68	802.21
12. 5/31/68	644.65
13. 8/31/68	540.00
14. 11/30/68	604.95

3. The applicant, Guido Lombardo, submitted payments with the returns for all tax due for the period ending August 31, 1965 and for the period beginning March 1, 1966 and ending May 31, 1966. A late payment of \$1,457.00 was received for the period beginning June 1, 1966 and ending

August 31, 1966 which included the tax due and the interest and late payment penalty for that period. For all other periods, no immediate tax payments accompanied the filed returns.

4. The Sales Tax Bureau issued the following Notices of Determination:

<u>For the</u> <u>Period Ending</u>	<u>Date of</u> <u>Notice</u>	<u>Notice No.</u>	<u>Tax Due</u>	<u>Penalties and</u> <u>Interest</u>
1. 2/28/66	5/13/66	90450016	\$ 1,102.97	\$ 77.19
2. 11/30/66 & 2/28/67	4/12/67	90450362	2,127.90	139.63
3. 5/31/67	7/5/67	90450500	853.73	42.69
4. 8/31/67	10/9/67	90450653	791.28	39.56
				* 71.22
5. 11/30/67	1/9/68	90450783	691.55	34.58
				* 41.49
6. 2/29/68	4/20/68	90450933	802.21	40.11
				* 24.06
7. 5/31/68	9/20/68	90451056	644.65	45.13
8. 8/31/68	10/21/68	90962560	540.00	27.00
9. 11/30/68	11/30/68	90451212	604.45	90.67
				* 259.82

* These figures represent penalties and interest which accrued from Date of Notice until actual payment.

5. The applicant, Guido Lombardo, made the following payments, prior to the payment in question, on the sums demanded under the Notices of Determination.

<u>Date of Payment</u>	<u>Amount Paid</u>
1. 6/27/66	\$1,180.16
2. 5/4/67	2,267.53
3. 8/10/67	853.73
4. 11/10/67	42.69
5. 7/18/68	1,000.00
6. 10/3/68	100.00
7. 1/9/69	100.00
8. 7/8/69	200.00

These payments covered all sums due under the notices numbered 90450016, 90450362, 90450500 and 90450653, and most of the assessment issued under Notice Number 90450783.

6. On November 21, 1969, the New York State Tax Commission received a certified check from the applicant's attorney in the sum of \$3,059.63. The applicant had been informed that his outstanding sales tax liability totalled \$2,000.70 and he believed that a refund would be forthcoming from this payment. The proceeds of said check were applied to the applicant's assessment in the following manner: \$269.68 was applied to the remainder of sums due under Notice 90450783; \$866.38, \$689.78 and \$567.00 were applied respectively to Notices 90450933, 90451056 and 90962560. A balance of \$666.79 remained.

7. On April 1, 1968, the Income Tax Bureau issued a notice and demand for unpaid unincorporated business tax for the years 1965 and 1966 under Case Number RO503227. The balance of the check received on November 21, 1969 was applied to this assessment. Another assessment (#RO503205) dated December 6, 1967 for unincorporated business tax and interest due from 1966. This assessment was paid in full by a check from the applicant in the amount of \$238.58 dated March 6, 1969.

CONCLUSIONS OF LAW

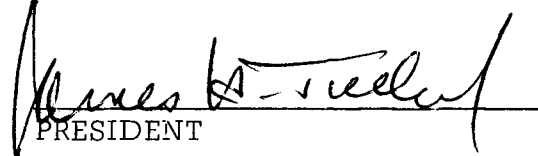
A. That, the applicant, Guido Lombardo, is not entitled to a refund.

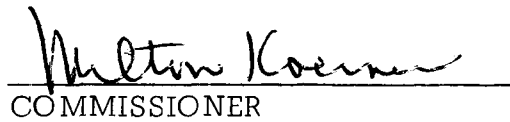
All funds received from or for the benefit of the applicant were properly applied to outstanding assessments of tax, penalties, and interest due under Articles 28 and 29 and under Article 23.

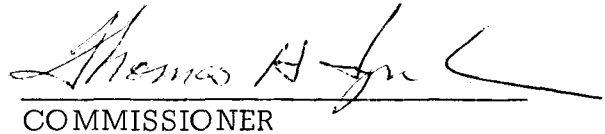
B. That, the application is denied.

DATED: Albany, New York
September 15, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER