

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER J. RINALDI d/b/a

RINALDI'S MARKET

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) XXXXXX~~ Period(s) :  
September 1, 1969 to August 31, 1972.

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 20th day of August, 1976, she served the within Notice of Determination by ~~XXXXXXX~~ mail upon Peter J. Rinaldi d/b/a Rinaldi's Market ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Peter J. Rinaldi d/b/a  
Rinaldi's Market  
2376 Canal Road  
Camillus, 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

20th day of August, 1976

Catherine Steele

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

August 20, 1976

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

Peter J. Rinaldi d/b/a  
Rinaldi's Market  
2376 Canal Road  
Camillus, New York

Dear Mr. Rinaldi:

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,

**Paul B. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
cc: Petitioner's Representative.

Taxing Bureau's Representative:

## STATE TAX COMMISSION

In the Matter of the Application :  
of :  
PETER J. RINALDI d/b/a : DETERMINATION  
RINALDI 'S MARKET :  
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 September 1, 1969 to :  
August 31, 1972.

Applicant, Peter J. Rinaldi d/b/a Rinaldi's Market, residing at 2376 Canal Road, Camillus, New York, filed an application for revision of a determination for refund of sales and use taxes under Article 28 and 29 of the Tax Law for the period September 1, 1969 to August 31, 1972. (File No. 00258). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on April 1, 1976, at 1:15 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of Counsel).

I. Whether additional sales tax was due from applicant, Peter J. Rinaldi d/b/a Rinaldi's Market for the period September 1, 1969 to August 31, 1972.

II. Whether applicant, Peter J. Rinaldi d/b/a Rinaldi's Market, timely filed an application for a hearing.

FINDINGS OF FACT

1. Applicant, Peter J. Rinaldi d/b/a Rinaldi's Market, filed New York State and local sales and use tax returns for the period September 1, 1969 to August 31, 1972.
2. On December 13, 1972, as a result of a field audit of applicant, Peter J. Rinaldi d/b/a Rinaldi's Market, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period September 1, 1969 to August 31, 1972 in the sum of \$2,583.00 plus penalty and interest of \$676.77 for a total of \$3,260.67.
3. Applicant, Peter J. Rinaldi d/b/a Rinaldi's Market, returned to the Sales Tax Bureau a copy of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period September 1, 1969 to August 31, 1972. In his own handwriting thereon he requested a hearing because he received no reply to a letter allegedly written five months previously. There was no record of such communication with the Sales Tax Bureau. The envelope which enclosed the request for a hearing was postmarked March 16, 1973.
4. Applicant, Peter J. Rinaldi d/b/a Rinaldi's Market operated a grocery store at 757 State Fair Blvd., Syracuse, New York, during the period in issue. It was a family business in which the wife and children helped.
5. An audit of the applicant, Peter J. Rinaldi d/b/a Rinaldi's Market, by the Sales Tax Bureau in a test quarter of the year commencing September 1, 1971 to November 30, 1971, indicated that gross sales as

per its records were greater than sales reported. Pursuant to a markup test, taxable items varied from 14.2% on soda to 24.3% on beer. It was estimated that there was a margin of error of 36.9% on the reported taxable sales.

Audited taxable sales (9/1/71 to 11/30/71)	\$11,885.00
Reported taxable sales	-8,680.00
Difference	<u>3,205.00</u>
Percentage of omission	36.9%

The percentage of omission, 36.9%, was then applied to the audit period in issue, September 1, 1969 to August 31, 1972.

Total Reported taxable sales (9/1/62 to 8/31/72)	\$110,678.00
Percent of Omission	36.9%
Additional taxable sales (estimated)	40,840.00
Additional sales taxes due	2,583.90

6. The determination of additional taxable sales and resulting sales tax for the period September 1, 1969 through August 31, 1972, was based upon substantial findings of fact in the course of a field audit of applicant, Peter J. Rinaldi d/b/a Rinaldi's Market, his books and records. The Sales Tax Bureau, in arriving at its determination followed generally accepted procedures and tests consistent with the nature of the business operations. Applicant has failed to submit sufficient evidence to disprove the Sales Tax Bureau's determination of taxable sales on the computation of sales tax due.

7. On reconsideration of the amount of sales tax due from the applicant, Peter J. Rinaldi d/b/a Rinaldi's Market, and based on additional information on April 16, 1973, credit was allowed by the Sales Tax Bureau for the amount of sales tax already paid resulting in a sales tax due of \$1,746.00

CONCLUSIONS OF LAW

A. That the reconsideration by the Sales Tax Bureau, on April 16, 1973, establishing sales tax finally and irrevocably due of \$1,746.56 was based on new information. Therefore, the request for a hearing in March, 1973 was timely made pursuant to section 1138(a) and (c) of the Tax Law.

B. That the examination of applicant, Peter J. Rinaldi d/b/a Rinaldi's Market's books and records by the Sales Tax Bureau was properly conducted and resultant findings as to the amount of additional sales tax due for the period September 1, 1969 through August 31, 1972 were supported by substantial evidence.

C. That the application of Peter J. Rinaldi d/b/a Rinaldi's Market is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 13, 1972 as amended on April 16, 1973 is sustained.

DATED: Albany, New York  
August 20, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER