

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP LOMBARDO d/b/a
BARDO CONSTRUCTION COMPANY

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 ~~Year(s)~~ Period(s)
12/1/70 through 11/30/73

State of New York
County of

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 24th day of April, 1978, she served the within
Notice of Determination by ~~(certified)~~ mail upon Philip Lombardo d/b/a
Bardo Construction Co.
~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Philip Lombardo d/b/a
Bardo Construction Company
640 Halstead Avenue
Mamaroneck, NY 10543
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

24th day of April, 1978.





UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Washington, D.C. 20535

May 10, 1964

MEMORANDUM

TO : DIRECTOR, FBI

FROM : SAC, NEW YORK

SUBJECT :

RE :

NY 100-100000

Reference is made to New York letter to Bureau dated 5/8/64.

Enclosed for the Bureau are two copies of a letterhead memorandum dated and captioned as above.

Very truly yours,
Special Agent in Charge

Enclosed for the Bureau are two copies of a letterhead memorandum dated and captioned as above.

Very truly yours,
Special Agent in Charge

Enclosed for the Bureau are two copies of a letterhead memorandum dated and captioned as above.

Very truly yours,
Special Agent in Charge

cc

44-100000

NY 100-100000



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

April 24, 1978

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

**Philip Lombardo d/b/a
Bardo Construction Company
640 Halstead Avenue
Mamaroneck, NY 10543**

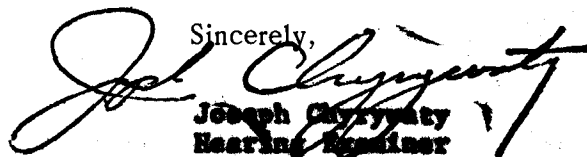
Dear Mr. Lombardo:

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 & 1250** 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 Chirgatz
Hearing Examiner**

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
PHILIP LOMBARDO d/b/a : DETERMINATION
BARDO CONSTRUCTION COMPANY :
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, 1970 through :
November 30, 1973. :

Applicant, Philip Lombardo d/b/a Bardo Construction Company, 640 Halstead Avenue, Mamaroneck, New York 10543, 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, 1970 through November 30, 1973 (File No. 15023).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 28, 1977 at 9:15 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether applicant was liable for sales tax on additional taxable sales determined by the Sales Tax Bureau for the period December 1, 1970 through November 30, 1973.

FINDINGS OF FACT

1. On April 4, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Philip Lombardo d/b/a Bardo Construction Company, for taxes due in the amount of \$18,450.00, plus penalty and interest.

2. In an attempt to audit applicant's books and records, the Sales Tax Bureau discovered that the only records available were applicant's 1970 Federal income tax return and a worksheet of sales for 1972. The Bureau determined that the gross sales as reported on the 1970 Federal return were all taxable sales. The Bureau then multiplied the taxable sales for 1970 by three, in order to establish the applicant's taxable sales for the three-year period from December 1, 1970 through November 30, 1973.

3. Applicant, Philip Lombardo d/b/a Bardo Construction Company, contended that he submitted bills to the auditors showing taxes paid on materials which he purchased. However, the Sales Tax Bureau could not reconcile the bills presented with invoices from jobs performed by the applicant. Since no invoices were available for a full month or quarter, a test of sales could not be performed.

4. Applicant's sales tax returns for the period in question showed no figures for gross or taxable sales. It was alleged by applicant that all work performed by him was either of a capital improvement nature, or was work done for an exempt organization. No capital improvement certificates or invoices clearly designating the

various jobs as being capital improvements were presented by the applicant. Applicant did submit an exempt organization certificate, but the form which he presented was not properly completed.

5. Applicant, Philip Lombardo, failed to submit any documentary evidence in the form of books and records to show that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against him was improper.

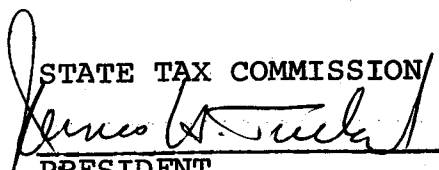
CONCLUSIONS OF LAW

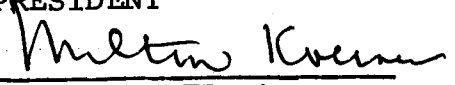
A. That where necessary, the Sales Tax Bureau may estimate sales tax due on the basis of available records in accordance with the intent and meaning of section 1138(a) of the Tax Law. Since applicant failed to introduce documents which disprove the deficiency determined to be due by the Sales Tax Bureau in its Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 4, 1974, said deficiency is correct.

B. That the application of Philip Lombardo, d/b/a Bardo Construction Company, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 4, 1974 is sustained.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER