

STATE TAX COMMISSION
TAX APPEALS BUREAU
MEMORANDUM

TO : Berthlynn Davis
FROM : Aloysius J. Nendza
SUBJECT: Herbert Ramos
Amended Determination

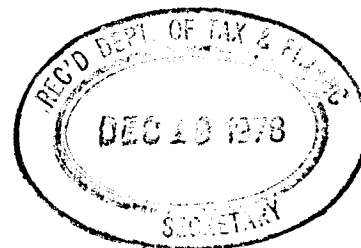
Attached is an Amended Determination which corrects Conclusion of Law B. The original Determination contained a typographical error wherein February, 1972 was inadvertently typed February, 1975.

Please have this Amended Determination walked through so that we can send it out immediately.


Assistant Director

December 18, 1978

Attachment



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT RAMOS

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 ~~XXXXXX~~ Period(s) :
September, 1971 through February, 1975.

State of New York
County of Albany

John Huhn

, 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 5th day of January , 1979 , ~~he~~ served the within
Admended
Notice of Determination by ~~XXXXXX~~ mail upon Herbert Ramos

~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Herbert Ramos
342 West 23rd Street
New York, New York 10011

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.

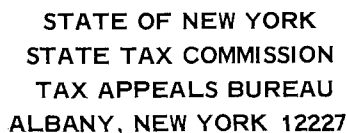
That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

5th day of January , 19 79.

Mary Dominici

John Huhn



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

January 5, 1979

Herbert Ramos
342 West 23rd Street
New York, New York 10011

Dear Mr. Ramos:

Please take notice of the **Amended 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 CHYRYWATY
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 9, 1978. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether applicant paid sales tax on the rental of a hotel room while a permanent resident and is thereby entitled to a refund of said tax.

II. Whether applicant timely filed an application for credit or refund of state and local sales or use tax for the period September, 1971 through February, 1975.

FINDINGS OF FACT

1. On April 17, 1975, applicant, Herbert Ramos, filed an application for credit or refund of state and local sales or use tax for the period September, 1971 through February, 1975. Applicant requested a refund of \$415.62 representing sales taxes allegedly paid on the rental of a hotel room while a permanent resident.

2. During the period at issue, applicant resided at the Baratt Hotel, 342 West 23rd Street, New York, New York. Applicant paid his rent on a bi-weekly basis.

3. Applicant contended that sales tax was paid on the bi-weekly rental. Applicant submitted room rental receipts which indicated the amount of rent paid for the bi-weekly period. The receipts contained no reference to sales tax or any other evidence that sales tax was, in fact, being charged.

4. On October 3, 1975, the Sales Tax Bureau denied applicant's refund claim on the grounds that the rental receipts did not show any sales tax as being charged.

5. Applicant submitted no documentary or other substantial evidence to show that sales tax was charged on the rentals.

CONCLUSIONS OF LAW

A. That applicant, Herbert Ramos, failed to sustain the burden of proof that sales tax was paid on the rental of the hotel room.

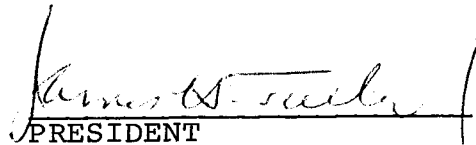
B. That the application for credit or refund of state and local sales or use taxes was not timely for the period September, 1971 through February, 1972 and would be excluded from consideration under any circumstances by virtue of section 1139(a) of the Tax Law.

C. That the application of Herbert Ramos is denied and the Denial of Refund, dated October 3, 1975, is hereby sustained.

DATED: Albany, New York

January 5, 1979

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER