

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph M. & Pamela G. Argentieri :
d/b/a Argentieri's Pizzeria : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 9/1/73-7/31/75. :

State of New York
County of Albany

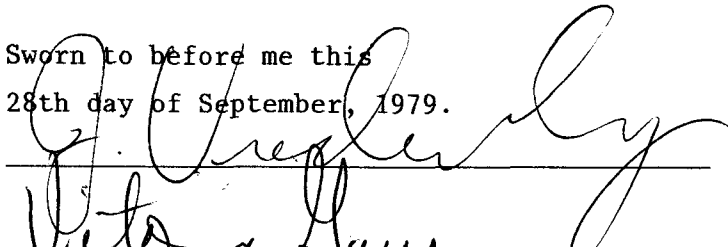
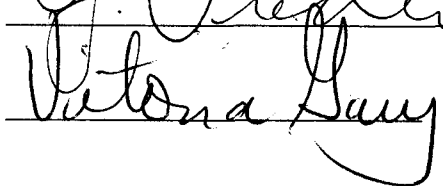
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Joseph M. & Pamela G. Argentieri, d/b/a Argentieri's Pizzeria, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph M. & Pamela G. Argentieri
d/b/a Argentieri's Pizzeria
123 Frantzen Terrace
Cheektowaga, NY 14225

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph M. & Pamela G. Argentieri :
d/b/a Argentieri's Pizzeria : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
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State of New York
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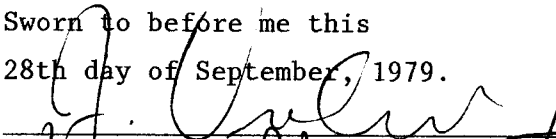
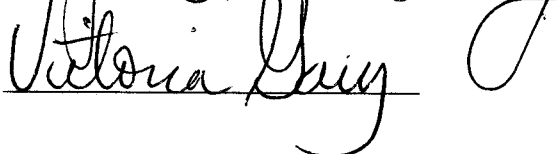
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Michael L. Montgomery the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Michael L. Montgomery
Magavern, Magavern, Lowe, Beilewech & Dopkins
20 Cathedral Park
Buffalo, NY 14202

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
28th day of September, 1979.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Joseph M. & Pamela G. Argentieri
d/b/a Argentieri's Pizzeria
123 Frantzen Terrace
Cheektowaga, NY 14225

Dear Mr. & Mrs. Argentieri:

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,



cc: Petitioner's Representative
Michael L. Montgomery
Magavern, Magavern, Lowe, Beilewech & Dopkins
20 Cathedral Park
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
JOSEPH M. ARGENTIERI & PAMELA G. ARGENTIERI	:	DETERMINATION
d/b/a ARGENTIERI'S PIZZERIA	:	
	:	
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, 1973 through	:	
June 30, 1975.	:	

Applicants, Joseph M. Argentieri and Pamela G. Argentieri d/b/a Argentieri's Pizzeria, 123 Frantzen Terrace, Cheektowaga, New York 14225, 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 September 1, 1973 through June 30, 1975 (File No. 14154).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on July 17, 1978 at 1:15 P.M. Applicants appeared by William Savino, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether applicants were liable for additional sales taxes for the period September 1, 1973 through June 30, 1975.

FINDINGS OF FACT

1. On June 25, 1975, the Sales Tax Bureau was notified of the sale of Argentieri's Pizzeria by a Notification of Sale, Transfer or Assignment in Bulk (ST-274) sent by the purchasers, Donald and Peggy Clark. Said Notification indicated that the total sales price of the business was \$10,000.00, with furniture and fixtures valued at \$2,000.00.

2. On August 27, 1975, the Sales Tax Bureau sent a Bulk Sale Questionnaire (ST-450) to applicants, requesting information regarding sales and purchases. The completed form was returned by applicants on September 25, 1975.

3. On November 6, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants for the period September 1, 1973 through June 30, 1975, in the amount of \$2,670.54, plus penalty and interest of \$834.69, for a total of \$3,505.23.

Based on a review of the Bulk Sale Questionnaire and of sales tax returns filed by applicants, the Sales Tax Bureau concluded that the sales contained thereon were incorrect; therefore, it issued the aforesaid Notice.

4. Applicants applied for a revision of the determination of the deficiencies in sales tax.

5. The Sales Tax Bureau estimated applicants' markup on cost to be 250%. This percentage was applied to merchandise purchased for the period September 1, 1973 through December 31, 1974 in the amount of \$11,486.00, to arrive at estimated sales of \$40,201.00. Applicants reported sales of \$11,904.00 for the same period, leaving additional sales of \$28,297.00, or an increase of 240%. This percentage was used to project sales for the entire period at issue.

Applicants were also held liable for failure to collect the bulk sales tax of \$140.00; however, this is not at issue.

6. Applicants did not produce sufficient records at a district office conference, to enable the bureau representative to recommend an adjustment to the determination.

7. Applicants purchased the pizzeria on September 1, 1973, and it was subsequently sold on June 30, 1975. Sales consisted of pizza and submarine sandwiches for take-out only. Business hours were from 5:00 P.M. to 11:00 P.M. daily.

The business was operated on a part-time basis because applicants were both employed full-time.

8. Applicants submitted the following books and records:

- a) Cash register tapes for the period September 4, 1973 through May 31, 1975;
- b) Cash receipts journal;
- c) Purchase invoices from major suppliers;
- d) Ledger of purchases; and
- e) Quarterly income statements.

Cash register tape totals agreed with daily postings to the cash receipts journal. The cash receipts journal was also in agreement with gross sales which were reported on sales tax returns and on Schedule "C" of Federal income tax returns. Purchase invoices were traced to the purchase ledger and were found to be properly recorded. Income statements which were prepared quarterly by Franklin D. Richards, Accountant, showed that applicants had a continuous net operating loss.

9. Applicants' business was situated between two chain pizzerias. As a result, applicants had to maintain low selling prices. Rising food costs plus low selling prices caused their operating losses, and the ultimate failure of the business.

10. An analysis of the cost of the individual ingredients of a) a steak submarine with cheese and peppers and b) a small pepperoni pizza (two of the more popular items) disclosed a total cost of \$1.55 and \$2.42, respectively. The selling prices of said items were \$1.35 and \$2.10, respectively.

11. Applicants' sales and purchase records accurately reflected the business activity. The sales tax returns filed for the period September 1, 1973 through June 30, 1975 which were based on such records, were correct.

CONCLUSIONS OF LAW

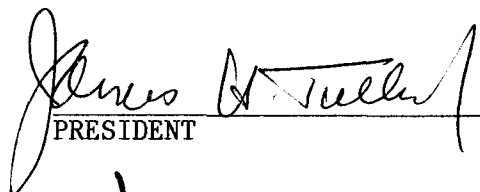
A. That since applicants correctly reported sales on New York State and local sales and use tax returns filed for the period September 1, 1973 through June 30, 1975, the additional tax of \$2,530.54 which the Sales Tax Bureau determined to be due, is cancelled.

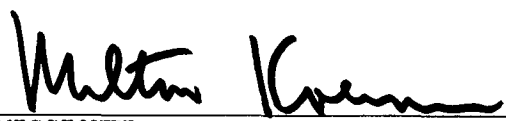
B. That the application of Joseph M. Argentieri and Pamela G. Argentieri d/b/a Argentieri's Pizzeria is granted to the extent indicated in Conclusion of Law "A"; that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 6, 1975; and that, except as so granted, the application is in all other respects denied.

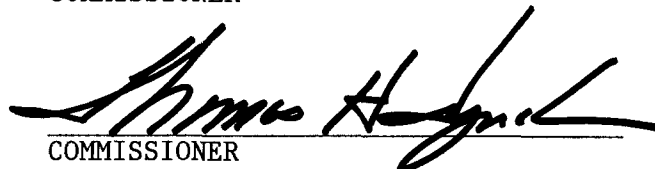
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO..... Mr. Coburn

Remailed 10/17/79.

10/17/79

Joseph Chyrywaty

M-75 (5/76)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH M. ARGENTIERI & PAMELA G. ARGENTIERI
d/b/a ARGENTIERI'S PIZZERIA

AFFIDAVIT OF MAILING

For ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ :
~~XX~~ 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 ~~(XX)~~ :
September 1, 1973 through June 30, 1975.

State of New York
County of Albany

Jay Vredenburg, 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 17th day of October, 1979, he served the within

Notice of Determination by ~~(XXXXXXXXXX)~~ mail upon Pamela G. Argentieri d/b/a
Argentieri's Pizzeria ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,

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

as follows: Joseph M. & Pamela G. Argentieri
d/b/a Argentieri's Pizzeria
9 Bosse Lane
West Seneca, New York 14224

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 ~~XXXXXXXXXXXXXXXXXX~~
~~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

17th day of October, 1979.

Priscilla A. Wood

J. J. Vredenburg

REQUEST FOR BETTER ADDRESS

Requested by <i>Lynn Huce</i>	Unit <i>TAB Rm 107 Bldg 9</i>	Date of Request <i>10/2/79</i>
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Please find most recent address of taxpayer described below; return to person named above.

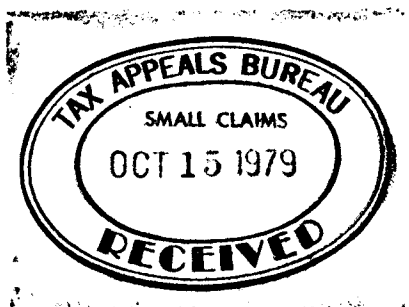
Social Security Number <i>107286085 S.S.</i>	Date of Petition <i>76/03/25</i>
Name <i>JOSEPH M. + PAMELA G. ARGENTIERI</i>	
Address <i>D/BA ARGENTIERI'S PIZZERIA 123 FRANTZEN TERRACE CHEEKTOWAGA, NY 14225</i>	

Results of search by Files

<input checked="" type="checkbox"/> New address:	<i>9 Bosse Lane West Seneca New York 14224</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	<i>nothing better</i>

Searched by <i>H. Bennett</i>	Section <i>Hiles/B</i>	Date of Search <i>10/15/79</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER



TA-26 (4-76) 25M

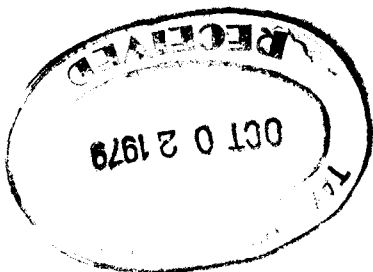
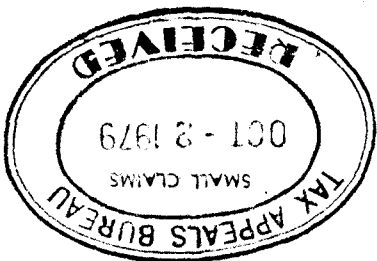
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Joseph M. & Pamela G. Argentieri
d/b/a Argentieri's Pizzeria
123 Frantzen Terrace
Cheektowaga, NY 14225

9 Boase Lane
West Seneca, New York
14224



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

to Mr. Coburn

Remailed to original address.

10/25/79

Joseph Chyrywaty

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH M. & PAMELA G. ARGENTIERI :
d/b/a ARGENTIERI'S PIZZERIA

AFFIDAVIT OF MAILING

For ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ :
~~XX~~Revision of a Determination or a Refund
of Sales & Use :
Taxes under Article ~~(X)~~ 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(XX)~~ :
September 1, 1973 through June 30, 1975.

State of New York
County of Albany

Jay Vredenburg , 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 25th day of October , 1979, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Joseph M. and
d/b/a Argentieri's Pamela G. Argentieri
Pizzeria ~~(Representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph M. & Pamela G. Argentieri
d/b/a Argentieri's Pizzeria
123 Frantzen Terrace
Cheektowaga, NY 14225
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)~~
~~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

25th day of October , 1979.

Joanne Krapp

J. J. Vredenburg

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

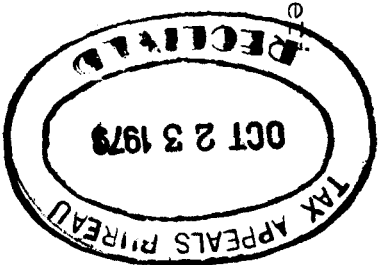
STATE CAMPUS

ALBANY, N. Y. 12227

Joseph M. & Pamela G. Argentieri
d/b/a Argentieri's Pizzeria
9 Bosse Lane
West Seneca, New York 14224

NO SUCH NUMBER

NO SUCH NUMBER



54



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO Mr. Coburn

Original sent and remailed twice.
Returned again.

10/30/79

Joseph Chyrywaty

M-75 (5/76)



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

REMAILED: October 17, 1979

REMAILED: October 25, 1979

September 28, 1979

Joseph M. & Pamela G. Argentieri
d/b/a Argentieri's Pizzeria
123 Frantzen Terrace
Cheektowaga, NY 14225

Dear Mr. & Mrs. Argentieri:

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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Michael L. Montgomery
Magavern, Magavern, Lowe, Beilewech & Dopkins
20 Cathedral Park
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
JOSEPH M. ARGENTIERI & PAMELA G. ARGENTIERI	:	DETERMINATION
d/b/a ARGENTIERI'S PIZZERIA	:	
	:	
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, 1973 through	:	
June 30, 1975.	:	

Applicants, Joseph M. Argentieri and Pamela G. Argentieri d/b/a Argentieri's Pizzeria, 123 Frantzen Terrace, Cheektowaga, New York 14225, 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 September 1, 1973 through June 30, 1975 (File No. 14154).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on July 17, 1978 at 1:15 P.M. Applicants appeared by William Savino, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether applicants were liable for additional sales taxes for the period September 1, 1973 through June 30, 1975.

FINDINGS OF FACT

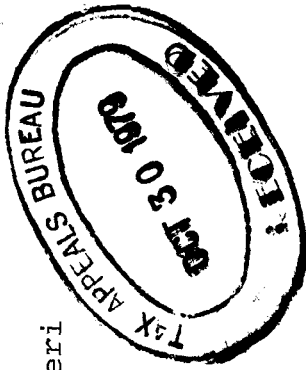
1. On June 25, 1975, the Sales Tax Bureau was notified of the sale of Argentieri's Pizzeria by a Notification of Sale, Transfer or Assignment in Bulk (ST-274) sent by the purchasers, Donald and Peggy Clark. Said Notification indicated that the total sales price of the business was \$10,000.00, with furniture and fixtures valued at \$2,000.00.

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

NOT FORWARDED

Joseph M. & Pamela G. Argentieri
d/b/a Argentieri's Pizzeria
123 Frantzen Terrace
Cheektowaga, NY 14225



2. On August 27, 1975, the Sales Tax Bureau sent a Bulk Sale Questionnaire (ST-450) to applicants, requesting information regarding sales and purchases. The completed form was returned by applicants on September 25, 1975.

3. On November 6, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants for the period September 1, 1973 through June 30, 1975, in the amount of \$2,670.54, plus penalty and interest of \$834.69, for a total of \$3,505.23.

Based on a review of the Bulk Sale Questionnaire and of sales tax returns filed by applicants, the Sales Tax Bureau concluded that the sales contained thereon were incorrect; therefore, it issued the aforesaid Notice.

4. Applicants applied for a revision of the determination of the deficiencies in sales tax.

5. The Sales Tax Bureau estimated applicants' markup on cost to be 250%. This percentage was applied to merchandise purchased for the period September 1, 1973 through December 31, 1974 in the amount of \$11,486.00, to arrive at estimated sales of \$40,201.00. Applicants reported sales of \$11,904.00 for the same period, leaving additional sales of \$28,297.00, or an increase of 240%. This percentage was used to project sales for the entire period at issue.

Applicants were also held liable for failure to collect the bulk sales tax of \$140.00; however, this is not at issue.

6. Applicants did not produce sufficient records at a district office conference, to enable the bureau representative to recommend an adjustment to the determination.

7. Applicants purchased the pizzeria on September 1, 1973, and it was subsequently sold on June 30, 1975. Sales consisted of pizza and submarine sandwiches for take-out only. Business hours were from 5:00 P.M. to 11:00 P.M. daily.

The business was operated on a part-time basis because applicants were both employed full-time.

8. Applicants submitted the following books and records:

- a) Cash register tapes for the period September 4, 1973 through May 31, 1975;
- b) Cash receipts journal;
- c) Purchase invoices from major suppliers;
- d) Ledger of purchases; and
- e) Quarterly income statements.

Cash register tape totals agreed with daily postings to the cash receipts journal. The cash receipts journal was also in agreement with gross sales which were reported on sales tax returns and on Schedule "C" of Federal income tax returns. Purchase invoices were traced to the purchase ledger and were found to be properly recorded. Income statements which were prepared quarterly by Franklin D. Richards, Accountant, showed that applicants had a continuous net operating loss.

9. Applicants' business was situated between two chain pizzerias. As a result, applicants had to maintain low selling prices. Rising food costs plus low selling prices caused their operating losses, and the ultimate failure of the business.

10. An analysis of the cost of the individual ingredients of a) a steak submarine with cheese and peppers and b) a small pepperoni pizza (two of the more popular items) disclosed a total cost of \$1.55 and \$2.42, respectively. The selling prices of said items were \$1.35 and \$2.10, respectively.

11. Applicants' sales and purchase records accurately reflected the business activity. The sales tax returns filed for the period September 1, 1973 through June 30, 1975 which were based on such records, were correct.

CONCLUSIONS OF LAW

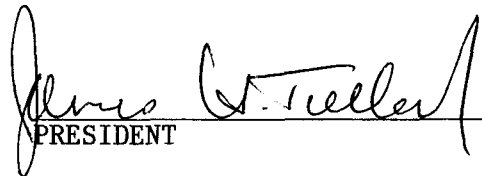
A. That since applicants correctly reported sales on New York State and local sales and use tax returns filed for the period September 1, 1973 through June 30, 1975, the additional tax of \$2,530.54 which the Sales Tax Bureau determined to be due, is cancelled.


B. That the application of Joseph M. Argentieri and Pamela G. Argentieri d/b/a Argentieri's Pizzeria is granted to the extent indicated in Conclusion of Law "A"; that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 6, 1975; and that, except as so granted, the application is in all other respects denied.

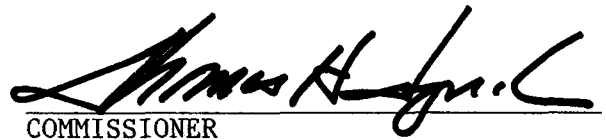
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER