

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
A & M CARTING ENTERPRISES, INC.  
and MICHAEL IANNETTI, individually and  
as officer, and LUDWIG J. ABRUZZO (RECEIVER)  
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)  
November 30, 1971 - August 31, 1974

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Anthony Kadela, 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 23rd day of May, 1979, she served the within  
Notice of Determination by ~~(certified)~~ mail upon A&M Carting Enterprises,  
and as officer, and Inc., and Michael  
Ludwig J. Abruzzo ~~(representative of)~~ the petitioner in the within proceeding, Iannetti, individually

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

as follows:

A & M Carting Enterprises, Inc.  
ATTN: Michael Iannetti  
8 Jamar Drive  
Port Jefferson, New York 11776

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 ~~(XXXXXX)~~  
~~(XXXXXX)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of the)~~ petitioner.  
~~XXXXXXXXXXXXXXXXXXXX~~

Sworn to before me this

23rd day of May, 1979

Marilyn J. Papineau

Anthony Kadela

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
A & M CARTING ENTERPRISES, INC. :  
and MICHAEL IANNETTI, individually and :  
as officer, and LUDWIG J. ABRUZZO (RECEIVER) :  
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 ~~XXXXXXX~~ Period(s) :  
November 30, 1971 - August 31, 1974

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County of Albany

Anthony Kadela, 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 23rd day of May, 1979, he served the within  
Notice of Determination by ~~(XXXXXX)~~ mail upon Dormes & Frankel and  
Robert Heft and  
Peter R. Newman (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Malerba, Abruzzo, Clancy, Dormes Robert Heft & Peter R. Newman  
& Frankel One Huntington Quadrangle  
164 Main Street (25A) Melville, NY  
Huntington, NY  
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

23rd day of May, 1979.

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STATE TAX COMMISSION

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of  
A & M CARTING ENTERPRISES, INC.  
and MICHAEL IANNETTI, individually and  
as officer, and LUDWIG J. ABRUZZO (RECEIVER)  
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)  
November 30, 1971-August 31, 1974

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Anthony Kadela, 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 23rd day of May, 1979, she served the within  
Notice of Determination by ~~XXXXXX~~ mail upon Ludwig J. Abruzzo

~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Ludwig J. Abruzzo  
164 Main Street  
Huntington, New York 11743

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)~~  
~~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

23rd day of May, 1979

Marilyn J. Papineau

Anthony Kadela



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

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

May 23, 1979

**A & M Carting Enterprises, Inc.**  
**ATTN: Michael Iannetti**  
**8 Jamar Drive**  
**Port Jefferson, New York 11776**

**Gentlemen:**

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,

**Michael Alexander**  
**Supervising Tax Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative



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

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

May 23, 1979


Ludwig J. Abruzzo  
164 Main Street  
Huntington, New York 11743

Dear Mr. Abruzzo:

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.

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Sincerely,  
  
**Michael Alexander**  
Supervising Tax Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Applications	:	
of	:	
A & M CARTING ENTERPRISES, INC.	:	
and MICHAEL IANNETTI, individually	:	DETERMINATION
and as officer, and LUDWIG J. ABRUZZO (RECEIVER)	:	
for Revision of a Determination or for Refund of	:	
Sales and Use Taxes under Articles 28 and 29 of	:	
the Tax Law for the Periods November 30, 1971 to	:	
August 31, 1974.	:	

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Applicants, A & M Carting Enterprises, Inc. (hereinafter "A & M"), c/o Michael Iannetti, 8 Jamar Drive, Port Jefferson, New York 11776, Michael Iannetti, individually and as officer of A & M, and Ludwig J. Abruzzo, receiver, 164 Main Street, Huntington, New York 11743, filed applications 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 November 30, 1971 through August 31, 1974 (File No. 11590).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1977 at 9:35 A.M., and on January 18, 1978 at 11:20 A.M., May 4, 1978 at 10:55 A.M., September 28, 1978 at 11:00 A.M., September 29, 1978 at 11:00 A.M., October 30, 1978 at 10:00 A.M., and November 1, 1978 at 10:40 A.M. Applicant Ludwig Abruzzo appeared by Malerba, Abruzzo, Clancy, Dornes & Frankel, Esqs. (Raymond J. Clancy, Esq. and Robert J. Clancy, Esq., of counsel). Applicant Michael Iannetti appeared by Robert Heft, CPA, and Peter R. Newman, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether applicant Ludwig J. Abruzzo, as temporary receiver of A & M Carting Enterprises, Inc., is personally liable for sales and use taxes due from the corporation for the period January 31, 1973 through August 31, 1974.

II. Whether the determinations of sales and use taxes due made by the Sales Tax Bureau for the period November 30, 1971 through August 31, 1974, were properly made against A & M Carting Enterprises, Inc. and Michael Iannetti, individually and as an officer of that corporation.

FINDINGS OF FACT

1. (a) On January 15, 1975, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due (Notice No. 90,774,851) against A & M Carting Enterprises, Inc. for the period March 1, 1974 through May 31, 1974. Said Notice asserted a tax due of \$3,627.05, plus penalty and interest of \$652.87, for a total of \$4,279.92.

(b) On July 8, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. 90,775,751) against A & M Carting Enterprises, Inc. for the period November 30, 1971 through August 31, 1974. Said Notice was for taxes due of \$24,808.66, plus penalty and interest of \$8,442.66, for a total of \$33,251.32.

(c) On July 8, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. 90,775,751 B) against Michael Iannetti, as an officer of A & M Carting, under sections 1138, 1131(1) and 1133 of the Tax Law for the period November 30, 1971 through August 31, 1974. Said Notice was for taxes due of \$10,568.65, plus penalty and interest of \$3,618.99, for a total of \$14,187.64. On July 8, 1975, the Sales Tax Bureau issued Notice No. 90,775,754 for the quarterly period ended February 28, 1974 and asserted a tax due of \$3,740.17, plus penalty and interest of \$1,346.46, for a total due of \$5,086.63. (This period was initially included in Notice No. 90,775,751B and no tax was indicated as being due.)

(d) On January 23, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. 90,776,857) against A & M Carting Enterprises, Inc. (c/o Ludwig J. Abruzzo, Receiver) for the period ended August 31, 1974 . Said Notice asserted taxes due of \$734.37, plus penalty and interest of \$271.72, for a total of \$1,006.09.

(e) On July 8, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. 90,775,751A) against Ludwig J. Abruzzo (Receiver) for the period August 31, 1973 through August 31, 1974. Said Notice was for taxes due of \$17,079.62, plus penalty and interest of \$5,732.43, for a total due of \$22,812.05.

(f) On July 8, 1975, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due (Notice No. 90,775,753) against Ludwig J. Abruzzo (Receiver) for the period ended February 28, 1974, for tax due of \$3,740.17, plus penalty and interest of \$1,346.46, for a total of \$5,086.63.

(g) On January 23, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. 90,776,857-C) against Ludwig J. Abruzzo for the period ended August 31, 1974. Said Notice asserted taxes due of \$734.37, plus penalty and interest of \$271.72, for a total of \$1,006.09.

2. On December 12, 1974, Michael Iannetti, as president of A & M Carting Enterprises, Inc., signed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes for the period September 1, 1971 through August 31, 1974, to and including June 20, 1975. By a consent dated May 8, 1975, Michael Iannetti further extended the period for making assessment of sales and use taxes to September 20, 1975.

3. Applicant A & M Carting Enterprises, Inc. was a New York corporation engaged in the business of collecting refuse from private households in and about Smithtown, New York. Michael Iannetti, the president of the corporation, owned no stock. He drove one of the collection trucks and was an authorized signatory on corporate checks, and on some sales tax returns.



4. On January 31, 1973, in the Supreme Court of the State of New York held in and for the County of Suffolk, in the case of M & R Rubbish Removal Company, Inc. and Robert Rosenthal, plaintiffs - against Salvatore Spatarella, A & M Carting Enterprises, Inc., All American Refuse Removal Corp., S.M.N. Leasing Corp., Michael Iannetti, Gerald Noest and William C. Weber, defendants (Index Nos. 73-562, 73-563 and 73-564), at the request of the plaintiffs, Ludwig J. Abruzzo, Esq. was appointed temporary receiver to preserve the assets for the benefit of the plaintiffs.

5. On June 28, 1974, a stipulation of settlement was executed by the parties to the suit, in which Ludwig J. Abruzzo had been appointed temporary receiver.

6. On September 23, 1974, the temporary receiver's powers were extended to authorize him to collect monies due A & M, and to require that all corporate books and records be turned over to him.

7. On November 26, 1974, the temporary receiver asked the U.S. Internal Revenue Service and the New York State Department of Taxation and Finance to enter the proceedings and detail to the court the outstanding tax liabilities of A & M.

8. On September 3, 1975, by order of the Supreme Court of the County of Suffolk, Ludwig J. Abruzzo was relieved of his duties as receiver, and appointed an escrow agent with respect to monies to be collected for routes sold by the defendants.

9. On August 24, 1976, in Special Term Part I of the Supreme Court in and for the County of Suffolk, Mr. Justice Lawrence Bracken issued an order approving a proposed contract of sale between A & M as seller and Full Service Trucking Co., Inc. as purchaser.

10. The court order dated August 24, 1976 directed Ludwig J. Abruzzo to obtain "offers to purchase the one item of equipment owned by A & M Carting Enterprises, Inc., a refuse removal truck...." The escrow agent was directed to pursue negotiations for the sale of accounts receivable.

11. The agreement of sale by and between A & M by Ludwig J. Abruzzo as receiver and Full Service Trucking Co., Inc. as purchaser transferred "a) All of its business, consisting of a residential refuse removal route,...."

12. The purchase agreement provided, inter alia, that there was an outstanding disputed tax liability with New York State. The contract provided adjustment computations in the event that the New York State tax liability should be determined to exceed \$14,000.00. Michael Iannetti, as president of Full Service Trucking, Co., Inc. and individually, signed the sale agreement. Both parties agreed that the purchase price was based entirely on the route conveyed, and on the restrictive covenant obligating the seller not to compete on said route.

13. On April 11, 1977, Mr. Justice Lawrence J. Bracken, Justice of the Supreme Court in and for the County of Suffolk, issued an order confirming the sale of the refuse removal route of A & M to Full Service Trucking Co., Inc. He authorized the delivery of a bill of sale. Inter alia, the order required the payment of \$2,000.00 to the Department of Taxation and Finance immediately, and the escrowee was ordered to pay to that department \$129.68 per month until the claim of the District Director of Internal Revenue Service had been paid in full. Thereafter, the Court would fix the amount to be paid the Department of Taxation and Finance after the State tax liability of A & M had been determined.

14. When applicant A & M entered into a stipulation of settlement with the plaintiffs in June of 1974, two 1973 Diamond Reo trucks (only leased to A & M) were transferred to Rebel Carting Co., Inc. These trucks were owned by S.M.N. Leasing Corp. This error was rectified by S.M.N. Leasing Corp. subsequently transferring the two trucks' registrations to Rebel Carting Co., Inc. Applicant A & M owned only a White truck which was sold separately at auction by court order in 1977. The contract of sale erroneously included the two trucks at a stated value of \$25,203.74. Rebel Carting paid sales tax of \$980.00.

15. Applicant A & M rented trucks from S.M.N. Leasing Corp. during the entire period under review. Included in the bills from S.M.N. Leasing were charges for equipment rental, oil and gas, maintenance charges, and New York's state and local sales taxes on the total charges.

16. The Sales Tax Bureau's audit showed that A & M's accounts receivable for the year ending September 30, 1972, as shown on the Federal income tax return (Form 1120), included \$11,290.57 not reported as gross sales for sales tax purposes. Applicant A & M's books of account were not available to explain the adjustment.

17. Gross sales per books of applicant A & M were accurately reported on sales tax returns, with the exception of the adjustment for the year ended September 30, 1972. Taxable sales as reported were found to be accurate.

18. Applicant Ludwig J. Abruzzo (appointed temporary receiver on January 31, 1973) finally received the books of account, checkbook, and bank statements of A & M from Michael Iannetti on March 8, 1976, although he had previously sought and obtained several court orders directing the submission of the records to him.

19. On September 16, 1974, applicant Ludwig J. Abruzzo notified the District Attorney of Suffolk County that the temporary receiver had discovered, in the safe of one of the defendants, checks which had been countersigned by the receiver and recorded as paid to creditors but which had not been mailed. Another of the checks were drawn to the Sales Tax Bureau. On December 23, 1974, the Supreme Court of Suffolk County expanded the powers of the temporary receiver to collect the receipts due applicants A & M and Michael Iannetti.

#### CONCLUSIONS OF LAW

A. That Michael Iannetti was a person required to collect tax for the period November 30, 1971 through August 31, 1974, in accordance with the meaning and intent of section 1131(1) of the Tax Law, both as an officer and an employee of A & M Carting Enterprises, Inc. As such he is personally liable for any unpaid sales and use taxes due for the period.

B. That applicant Ludwig J. Abruzzo was a "person" within the meaning and intent of section 1101(a) of the Tax Law being "...any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise," for the period February 1, 1973 through August 31, 1974; however, his liability, was limited to the proper exercise of the powers granted by the Court in the appointment of Ludwig J. Abruzzo as temporary receiver for the benefit of the plaintiffs. Having countersigned checks which were made out to the Sales Tax Bureau and attached to sales tax returns, applicant Ludwig J. Abruzzo, temporary receiver, was neither an officer nor an employee of the vendor. In the absence of culpable negligence, Ludwig J. Abruzzo was not liable personally for the collection and payment of sales and use taxes for the period in question. Had there been a sale of any tangible personal property in the sale of A & M's refuse collection route, applicant Ludwig J. Abruzzo would have been liable for sales tax on the bulk sale (section 1141(c) of the Tax Law); however, the sale consisted only of a restrictive covenant and a right to a refuse collection route. The receiver incurred no bulk sales tax liability from that transaction.

C. That applicants presented sufficient evidence to sustain their contention that no trucks were sold by A & M and that no bulk sales tax liability arose in June of 1974. Applicants established that A & M leased its trucks from M & N Leasing Corp. and were charged and paid sales tax on the rental, maintenance and supplies furnished by the lessor. Additional use taxes determined to be due by the Sales Tax Bureau should be deleted both for the alleged bulk sale and for the computed additional charges for supplies.

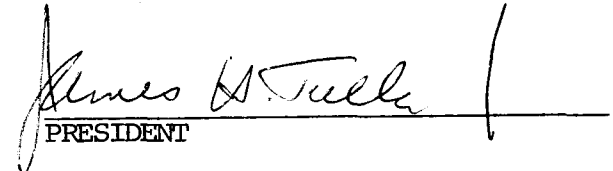
D. That applicants adduced no proof as to the reason for the adjustment of \$11,290.57 to accounts receivable for the fiscal year ended September 30, 1972, and for the omission of that amount from sales reported on the sales tax returns for the period. Applicants A & M and Michael Iannetti are liable for additional sales tax thereon, plus penalties and interest, until paid.

E. That the application of Ludwig J. Abruzzo, temporary receiver, is granted to the extent that determinations dated July 8, 1975 and January 23, 1976 are cancelled. The application of Michael Iannetti is granted to the extent set forth in "Conclusion of Law "C", but is in all other respects denied. The Sales Tax Bureau is directed to recompute the sales tax liability, and to give credit to applicants for the sums heretofor paid by Ludwig J. Abruzzo, escrowee, to the Department of Taxation and Finance, including \$2,000.00 paid on May 16, 1977, and for each \$129.68 monthly payment received since April 19, 1977. A revised Notice of Determination and Demand for Payment of Sales and Use Taxes Due shall be accordingly issued against applicant A & M Carting Enterprises, Inc. and Michael Iannetti, individually and as officer of A & M Carting Enterprises, Inc., together with lawful interest to date.

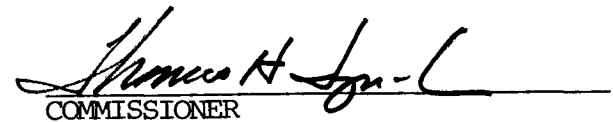
DATED: Albany, New York

May 23, 1979

STATE TAX COMMISSION

  
PRESIDENT

\_\_\_\_\_  
COMMISSIONER

  
COMMISSIONER