

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Camilla' Italian Cuisine, Inc. :
and Camille Bonceto, Indiv. & as officer : 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 Years 1973 - 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 7th day of September, 1979, he served the within notice of Determination by mail upon Camilla' Italian Cuisine, Inc., and Camille Bonceto, Indiv. & as officer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Camilla' Italian Cuisine, Inc.
and Camille Bonceto, Indiv. & as officer
1375 Mulberry Ave.
Flushing, NY 11355

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
7th day of September, 1979.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 7, 1979

Camilla' Italian Cuisine, Inc.
and Camille Bonceto, Indiv. & as officer
1375 Mulberry Ave.
Flushing, NY 11355

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,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CAMILLE'S ITALIAN CUISINE, INC.	:	DETERMINATION
AND	:	
CAMILLE BONACETO, Individually and	:	
as Officer	:	
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	:	
April 16, 1975.	:	

Applicants, Camille's Italian Cuisine, Inc. and Camille Bonaceto, individually and as officer, 137-25 Mulberry Avenue, Flushing, New York 11355, 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 April 16, 1975 (File No. 17903).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 30, 1978 at 10:45 A.M. Applicant Camille Bonaceto appeared pro se and for the corporation. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau properly determined additional sales taxes due from applicant Camille's Italian Cuisine, Inc. for the period September 1, 1973 through April 16, 1975, in accordance with the provisions of section 1138(a) of the Tax Law.

FINDINGS OF FACT

1. On April 18, 1975, the Sales Tax Bureau was notified of the sale of Camille's Italian Cuisine, Inc. (hereinafter "Camille's") by a Notification of Sale, Transfer or Assignment in Bulk (ST-274) which was sent by the purchaser, Raps Pizza, Inc.

2. On November 6, 1975, as the result of Camille's failure to submit information requested in a Bulk Sale Questionnaire (ST-450), the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period September 1, 1973 through April 16, 1975. Said Notice was for \$2,026.93, plus penalty and interest of \$565.64, for a total of \$2,592.57. The assessment was based on an estimation that the restaurant had \$5,000.00 in taxable sales per quarter. Credit was given for the sales tax previously remitted. Additionally, a bulk sales tax of \$240.00 was included in the assessment.

3. Camille's filed New York state and local sales and use tax returns for the period September 1, 1973 through February 28, 1975. The Sales Tax Bureau has no record of a return being filed for the period March 1, 1975 through April 16, 1975, the date of the bulk sale.

4. Upon receipt of an application for a revision of the determination, the Sales Tax Bureau conducted an audit of Camille's available records, which consisted of Federal tax returns only.

On audit, the Sales Tax Bureau found that purchases which were reported on Federal income tax returns exceeded the sales reported on sales tax returns which were filed for corresponding periods.

Merchandise purchases obtained from the Federal income tax returns were marked up an estimated 150% to determine taxable sales. This procedure disclosed tax due in substantially the same amount as was shown on the Notice issued on November 6, 1975; therefore, no adjustment was made to said Notice.

5. Applicant Camille's failed to submit documentary or other substantial evidence to disprove the Sales Tax Bureau's determination that additional sales tax was due.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau properly determined the amount of tax which was due from such information as was available, within the meaning and intent of section 1138(a) of the Tax Law.

B. That applicants failed to sustain their burden of proving that the determination was incorrect.

C. That the application of Camille's Italian Cuisine, Inc. and Camille Bonaceto, individually and as officer, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 6, 1975 is sustained.

DATED: Albany, New York

SEP 7 1979

STATE TAX COMMISSION

James B. Trull

PRESIDENT

William J. Korman

COMMISSIONER

Thomas J. Lynch

COMMISSIONER