

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Camijo Stable :
Joseph Parisi : 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 3/7/73 - 3/7/75. :

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 17th day of August, 1979, he served the within notice of Determination by mail upon Camijo Stable, Joseph Parisi, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Camijo Stable
Joseph Parisi
54-65 48th St.
Maspeth, NY 11378

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
17th day of August, 1979.

Carmen M. [Signature]

Jay F. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Camijo Stable :
Joseph Parisi : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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for the Period 3/7/73 - 3/7/75. :

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 17th day of August, 1979, he served the within notice of Determination by mail upon Martin B. Hirsh 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. Martin B. Hirsh
381 Sunrise Hwy.
Lynbrook, NY 11563

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
17th day of August, 1979.

Carmen Martorella

Jay Vredenburg



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

August 17, 1979

Camijo Stable
Joseph Parisi
54-65 48th St.
Maspeth, NY 11378

Dear Mr. Parisi:

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 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, reading "Michael Alexander".

cc: Petitioner's Representative
Martin B. Hirsh
381 Sunrise Hwy.
Lynbrook, NY 11563
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Application | : | |
| | : | |
| of | : | |
| | : | |
| JOSEPH PARISI | : | DETERMINATION |
| d/b/a CAMIJO STABLES | : | |
| | : | |
| 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 March 7, 1973 through March 7, | : | |
| 1975. | : | |

Applicant, Joseph Parisi d/b/a Camijo Stables, 54-65 48th Street, Maspeth, New York 11378, 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 March 7, 1973 through March 7, 1975 (File No. 10062).

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 September 14, 1976 at 2:45 P.M., and on January 19, 1978 at 2:55 P.M. Applicant appeared by Martin B. Hirsch, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. and Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the purchase price of race horses acquired through claiming races is subject to retail sales and use tax.

FINDINGS OF FACT

1. Applicant, Joseph Parisi, who operates a racing stable under the name Camijo Stables, filed no sales tax returns and paid no New York State sales or use taxes between March 7, 1973 and March 7, 1975.

2. On August 22, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes

of \$11,540.00, plus penalties of \$2,028.00 and interest of \$2,582.00. Prior to the date of this assessment, applicant had paid \$2,910.00, leaving an unpaid balance of \$13,240.00.

3. The sales and use tax assessment was based on purchase prices of from \$500.00 to \$20,000.00 paid for 18 thoroughbred horses which were either purchased or claimed at claiming races. The owner of a horse which is entered in a claiming race places his horse for sale, in effect, pursuant to the terms of the race. Once the horse is entered and the race begins, a "claim" or purchase of the horse is made by anyone who placed his bid prior to the race.

4. Applicant buys race horses, races them, sometimes breeds them and also sells them, basically through claiming races. Any purse money earned by a horse which applicant entered in a claiming race would belong to applicant as the original owner of the horse.

5. No evidence was proffered to substantiate payment of any other state's sales tax on the purchase of any of the 18 horses listed in the assessment.

6. Applicant stated that five of the horses were purchased in South America on November 2, 1973, and that the purchase price assigned to each of those horses by the Sales Tax Bureau included the \$2,000.00 cost to transport the animals to New York, plus \$2,500.00 for housing the horses prior to transport. Applicant did not substantiate his statement with any documentation of the actual purchase price of the horses.

7. Applicant relied on the advice of his attorney that he (applicant) was buying horses for resale and was not required to pay sales tax.

CONCLUSIONS OF LAW

A. That applicant's purchase of race horses at claiming races and his racing them in subsequent New York claiming races was subject to sales or use taxes, pursuant to sections 1105 and 1110 of the Tax Law. Cf. Jacobs v. Joseph,

282AD 622, 126 N.Y.S.2d 274 (1st Dep't 1953) (New York City use tax due on horses purchased for entrance in New York claiming races; such purchase is not "for resale only" so as to fall within tax exemption).

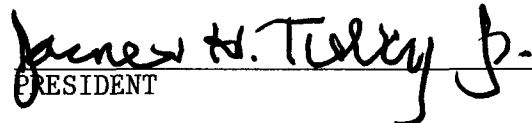
B. That in the absence of records to establish the actual purchase price of the property, the Sales Tax Bureau's use of the information available to arrive at a reasonable sales price was warranted.

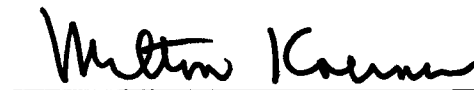
C. That the application of Joseph Parisi d/b/a Camijo Stables is granted to the extent that the interest in excess of the minimum interest, and the penalty imposed pursuant to section 1145(a) of the Tax Law are waived; that except as so granted, the application is in all other respects denied. The Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Tax Due dated August 22, 1975.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 17 1979


PRESIDENT


COMMISSIONER

COMMISSIONER