

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Gaetano Fagone :  
d/b/a Alpine Star Supermarket : 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 3/1/73 - 1/27/76. :

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 9th day of October, 1979, he served the within notice of Determination by mail upon Gaetano Fagone, d/b/a Alpine Star Supermarket, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gaetano Fagone  
d/b/a Alpine Star Supermarket  
115 Peter Ave.  
Staten Island, NY 10306

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  
9th day of October, 1979.

Mary Dominici

J. J. Vredenburg

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

October 9, 1979

Gaetano Fagone  
d/b/a Alpine Star Supermarket  
115 Peter Ave.  
Staten Island, NY 10306

Dear Mr. Fagone:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
GAETANO FAGONE	:	DETERMINATION
D/B/A ALPINE STAR SUPERMARKET	:	
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 1, 1973 through January 12,	:	
1976.	:	

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Applicant, Gaetano Fagone d/b/a Alpine Star Supermarket, 115 Peter Avenue, Staten Island, New York 10306, 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 1, 1973 through January 12, 1976 (File No. 16857).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1978 at 2:45 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether applicant is personally liable for failure to collect sales tax for the period March 1, 1973 through January 12, 1976.

FINDINGS OF FACT

1. On June 12, 1972, Gaetano Fagone purchased a grocery store and delicatessen business located in Corona, New York.
2. Applicant was a registered vendor with the Sales Tax Bureau and filed

sales tax returns for the period March 1, 1973 through November 30, 1975. The sales tax returns were signed by Giovanni Fagone, brother of the applicant.

3. On January 12, 1976, applicant sold the business to 48-02 108 Street Corp.

4. On January 19, 1976, the Sales Tax Bureau received a Notification of Sale, Transfer or Assignment in Bulk which stated that Gaetano Fagone d/b/a Alpine Star Supermarket had sold the "grocery store" located at 48-02 108th Street, Corona, New York, to the 48-02 108 Street Corp., effective January 12, 1976.

5. As a result of the bulk sale, an audit of applicant's books and records by the Sales Tax Bureau generated notices of determination and demand for payment of sales and use taxes due covering the period March 1, 1973 through January 12, 1976 in the amount of \$3,557.91, plus penalty and interest.

As a result of a post-assessment conference between applicant and representatives of the Sales Tax Bureau, notices of assessment review were issued on September 14, 1976, reducing the tax due to \$2,861.39.

6. Applicant contended that he a) purchased the store to put his brothers in business, b) did not participate in the daily operations of the business and c) sustained a financial loss from the business.

#### CONCLUSIONS OF LAW

A. That applicant, Gaetano Fagone, was a person required to collect sales tax for Alpine Star Supermarket, within the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law, and is personally liable therefor.

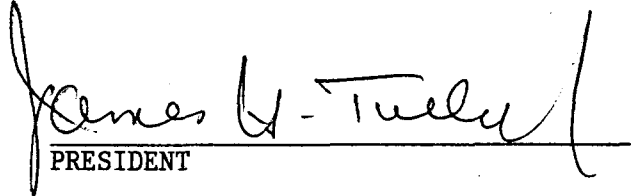
B. That the application of Gaetano Fagone d/b/a Alpine Star Supermarket

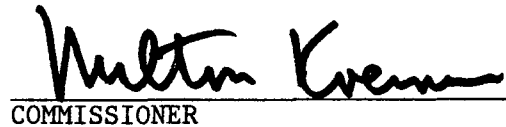
is denied and the notices of determination and demand for payment of sales and use taxes due issued on June 18, 1976 and July 9, 1976, as amended on September 14, 1976, are sustained.

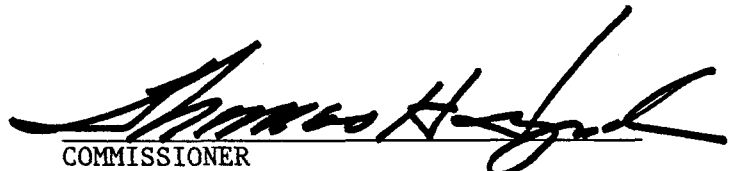
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER