

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Charles Gaydorus :
d/b/a Horton Hardware : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 of the Tax Law :
for the Period 3/1/73 -11/30/75. :

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 Charles Gaydorus, d/b/a Horton Hardware, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles Gaydorus
d/b/a Horton Hardware
198 Main St.
Afton, NY 13730

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.

Victoria Gary

Jay J. 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

Charles Gaydorus
d/b/a Horton Hardware
198 Main St.
Afton, NY 13730

Dear Mr. Gaydorus:

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 black ink, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

CHARLES GAYDORUS D/B/A :
HORTON HARDWARE :

DETERMINATION

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 :
November 30, 1975. :

Applicant, Charles Gaydorus d/b/a Horton Hardware, 198 Main Street, Afton, New York 13730, 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 November 30, 1975 (File No. 14574).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 44 Hawley Street, Binghamton, New York, on September 26, 1978 at 1:15 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau's audit of applicant's books and records accurately reflects additional taxable sales for the period March 1, 1973 through November 30, 1975.

FINDINGS OF FACT

1. Applicant, Charles Gaydorus d/b/a Horton Hardware, filed New York state and local sales and use tax returns for the period March 1, 1973 through November 30, 1975.

2. On April 22, 1976 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period March 1, 1973 through November 30, 1975. Said Notice was issued in the amount of \$2,463.44, plus penalty and interest of \$878.47, for a total of \$3,341.91.

3. Applicant operated a retail hardware and appliance store, and also sold and installed furnaces and hot water heaters.

4. On audit, the Sales Tax Bureau examined sales and purchase invoices, using the months of March and May of 1975 as test periods. The examination of sales invoices disclosed the following:

- (a) Applicant had a discount policy on LP gas sales for early payment, or for customers paying cash. Applicant reported sales tax on the amount of the net sale.
- (b) Applicant made mathematical errors when computing the tax.
- (c) Applicant made errors in posting the tax collected to the proper taxing jurisdiction.
- (d) Applicant made three sales to farmers of items that did not qualify for the farmer's exemption.

Applicant did not maintain a record of actual taxable sales, but rather computed taxable sales by dividing the amount of tax collected by the applicable tax rate.

The Sales Tax Bureau determined actual taxable sales by tax jurisdiction for the test periods. Audited taxable sales exceeded reported taxable sales, with one exception. A separate margin of error was computed for each tax jurisdiction by dividing the additional taxable sales by the reported taxable sales. The margins of error were applied to reported taxable sales for each jurisdiction, resulting in additional sales tax due of \$2,463.44.

The Sales Tax Bureau found no discrepancies with respect to use tax.

5. An informal conference was held in the Binghamton District Office on August 10, 1976. It was agreed at the conference that the Sales Tax Bureau would perform an additional one-month test. The month of February, 1975 was selected as the test period. Results similar to those described in Finding of Fact "4" were found in the test month.

The Sales Tax Bureau combined the results from the three test months and by using the aforementioned audit procedures, recomputed the tax due to be \$2,114.56.

The Notice issued April 22, 1976 was not adjusted by the Sales Tax Bureau.

6. Applicant agreed that tax was owing on the discounted LP gas sales. Applicant failed to submit any documentary evidence to disprove the audit findings.

CONCLUSIONS OF LAW

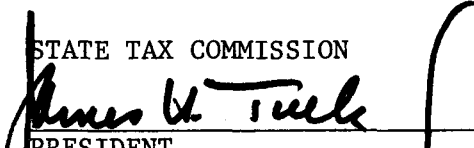
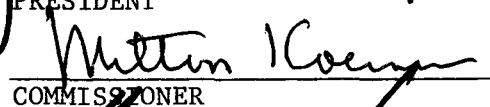
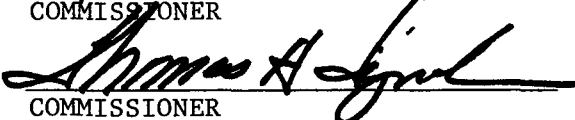
A. That the Sales Tax Bureau's audit of applicant's books and records followed generally accepted audit procedures consistent with the nature of the business operations; therefore, the findings which resulted in \$2,114.56 in additional sales tax due (reduced from \$2,463.44) for the period March 1, 1973 through November 30, 1975, are correct.

B. That the application of Charles Gaydorus d/b/a Horton Hardware is granted to the extent indicated in Conclusion of Law "A."

The Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 22, 1976; however, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER