

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Urban Belgrove :
d/b/a Belgrove Gas Appliances : 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 6/1/72-5/31/75. :

State of New York
County of Albany

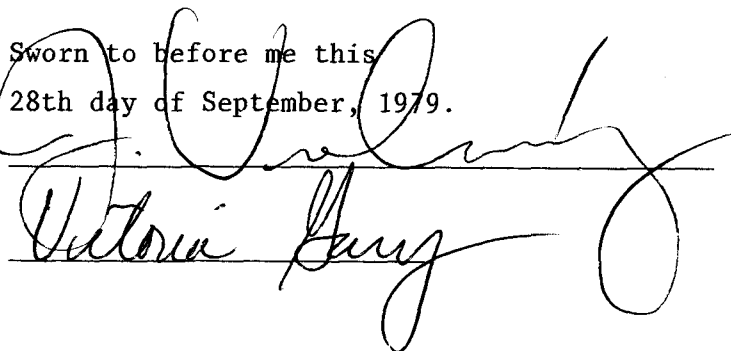
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Urban Belgrove, d/b/a Belgrove Gas Appliances, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Urban Belgrove
d/b/a Belgrove Gas Appliances
235 W. 1st St.
Mt. Vernon, NY 10550

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
28th day of September, 1979.


Victoria Long

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Urban Belgrove
d/b/a Belgrove Gas Appliances
235 W. 1st St.
Mt. Vernon, NY 10550

Dear Mr. Belgrove:

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	:	
URBAN BELGROVE d/b/a	:	DETERMINATION
BELGROVE GAS APPLIANCES	:	
	:	
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 June 1, 1972	:	
through May 31, 1975.	:	

Applicant, Urban Belgrove d/b/a Belgrove Gas Appliances, 235 West 1st Street, Mount Vernon, New York 10550, 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 June 1, 1972 through May 31, 1975 (File No. 11643).

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 January 10, 1978 and was continued on July 10, 1978. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt and Bruce Zalaman, Esqs., of counsel).

ISSUE

Whether the results of an audit of applicant's books and records by the Sales Tax Bureau properly reflect applicant's additional sales tax liability for the period June 1, 1972 through May 31, 1975.

FINDINGS OF FACT

1. Applicant, Urban Belgrove d/b/a Belgrove Gas Appliances, operated a home appliance sales and service store at 501 South Fifth Avenue, Mount Vernon, New York 10550. Applicant filed New York state and local sales tax returns for the period June 1, 1972 through May 31, 1975.

2. On December 5, 1975, as the result of an audit of applicant's books and records, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period June 1, 1972 through May 31, 1975, for taxes due of \$3,972.96, plus penalty and interest.

3. The audit results were based on the following audit procedures:

- (a) For the audit period, applicant provided his bank statements for the months of February 1974 through May 1975, with the exception of the month of August 1974. The auditor increased bank deposits per statements by 5% because all bank statements were not made available. This was also done to compensate for sales receipts which may not have been deposited. The adjusted deposits for the quarterly periods ended May 31, 1974, November 30, 1974, February 28, 1975 and May 31, 1975 were compared with gross sales which were reported on applicant's sales tax returns for the same quarters, to determine a 43% under-reporting of sales.
- (b) The 43% under-reporting was applied to gross sales which were reported in each tax quarter for which bank statements were not available. Said amount was added to the adjusted deposits for those periods for which bank statements were made available, resulting in adjusted gross sales of \$222,283.00 for the entire audit period. This amounted to additional taxable sales of \$66,860.00 and additional tax due of \$3,972.96.

4. Applicant contended that the audit result is erroneous because the bank deposits included items other than sales, such as bank loans.

5. Applicant introduced bank statements into evidence which showed deposits of \$20,969.00 for the period June 1, 1974 through August 31, 1974.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau's determination of additional sales taxes due was, in part, erroneous in that the 5% increase of applicant's bank deposits was not proper, in accordance with section 1138(a) of the Tax Law; therefore, said increase is hereby deleted from the taxable sales computation.

B. That the Notice issued by the Sales Tax Bureau is hereby modified in accordance with Finding of Fact "5" and Conclusion of Law "A". The additional tax due of \$3,972.96 is hereby reduced to \$3,134.21.

C. That the application of Urban Belgrove d/b/a Belgrove Gas Appliances is granted to the extent indicated in Conclusion of Law "B"; that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 5, 1975; and that, except as so modified, the application is in all other respects denied.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER