

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERNEST VAGLIO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~xxxx(s)xxx~~ Period(s) :
December 1, 1972 through August 25, 1975.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1979, ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Ernest Vaglio
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:

Ernest Vaglio
36 Simonson Place
Port Richmond, S.I., NY 10302

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

14th day of February , 1979.

Marilyn J. Papneau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
December 1, 1972 through August 25, 1975.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1979, ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Pasquale P. Caizza, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:

Pasquale P. Caizza, Esq.
143 Charles Avenue
Staten Island, NY 10302

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

14th day of February, 1979.

Maulin J. Papmian

John Huhn



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

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

February 14, 1979

**Ernest Vaglio
36 Simonson Place
Port Richmond, S.I., NY 10302**

Dear Mr. Vaglio:

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 and 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,

**Michael Alexander
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|--|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| ERNEST VAGLIO | : | 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 Periods December 1, 1972 through | : | |
| August 25, 1975. | : | |

Ernest Vaglio, 36 Simonson Place, Port Richmond, Staten Island, New York 10302, 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 periods December 1, 1972 through August 25, 1975 (File No. 16859).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 19, 1978 at 9:15 A.M. Applicant appeared by Pasquale P. Caizza, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Whether the estimation of additional taxable sales as determined by the Sales Tax Bureau was excessive.

II. Whether penalty and additional interest should be waived.

FINDINGS OF FACT

1. Applicant, Ernest Vaglio, operated a small grocery and delicatessen located at 1426 Castleton Avenue, Staten Island, New York, until August 25, 1975, when he sold same for \$13,000.00.

2. On March 2, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to applicant for the periods December 1, 1972 through August 25, 1975, in the amount of \$5,946.37, plus penalty and interest of \$2,120.03, for a total of \$8,066.40. On March 8, 1976, applicant timely filed an application for revision of said determination.

3. The determination of additional sales tax due is based on estimated taxable sales of \$7,500.00 per quarter for the tax periods in issue, due to petitioner's failure to present books and records. On his sales tax returns for the periods in issue, applicant reported taxable sales of between \$200.00 and \$300.00 per quarter.

4. Applicant generally operated his grocery store five days a week from 9:00 A.M. to 5:00 P.M. He did not employ any help. He was required to pay cash for all of his purchases. He did not maintain a bank account. He used a mechanical cash register for recording sales. His son kept a daily record of sales in a small book, based on the figures taken from the cash register. At the hearing, applicant offered in evidence the book containing the record of gross sales for 1974 and 1975, as well as his personal Federal income tax returns for

said years. The gross sales for said years, as reported by the taxpayer on his 1974 and 1975 Federal income tax returns on Schedule "C", agree with the amounts recorded in the book. Applicant's Federal net taxable income for 1974 and 1975 was \$4,498.00 and \$2,233.00, respectively.

5. The examiner assigned to conduct the audit did not appear at the hearing. The auditor who appeared at the hearing did not have any knowledge as to the basis for the estimated additional taxable sales. Applicant testified that the only other grocery stores in the area were large supermarkets like the "A & P". The representative for applicant endeavored to submit to representatives of the Sales Tax Bureau purchase invoices for 1974 and 1975, copies of Federal income tax returns for 1974 and 1975 and a record book of sales for 1974 and 1975, but same were not found to be acceptable.

6. Applicant testified that his taxable sales consisted of soap products, beer, cigarettes, candy and soda, which amounted to about \$20.00 per week. He estimated his gross sales at about \$2,000.00 per quarter.

7. Reasonable cause exists for waiver of penalty and additional interest.

CONCLUSIONS OF LAW

A. That the estimate of \$7,500.00 taxable sales per quarter is excessive. A more reasonable and fair estimate, in view

of the failure of the applicant to maintain complete and accurate records, is \$2,000.00 additional taxable sales per quarter.

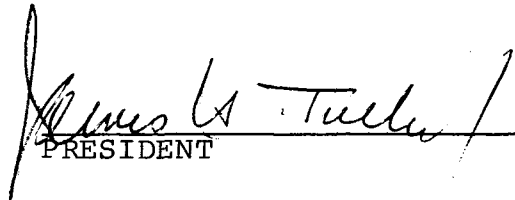
B. That interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law is hereby waived.

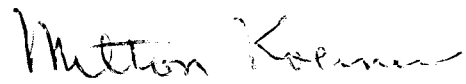
C. That the application of Ernest Vaglio is granted to the extent indicated in Conclusions of Law "A" and "B", supra; that the Sales Tax Bureau is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due as issued on March 2, 1976, and that, except as so granted, the application is in all other respects denied.

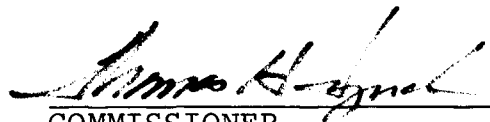
DATED: Albany, New York

STATE TAX COMMISSION

February 14, 1979


PRESIDENT


COMMISSIONER


COMMISSIONER