

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

John Wojcichi, Robert Golad & Halina Lampel :
d/b/a Dairy Farm

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 12/1/72-11/1/73. :

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 31st day of August, 1979, he served the within notice of Determination by mail upon John Wojcichi, Robert Golad & Halina Lampel, d/b/a Dairy Farm, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Wojcichi, Robert Golad & Halina Lampel
d/b/a Dairy Farm
678 Manhattan Ave.
Brooklyn, NY

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
31st day of August, 1979.

Marcy Dominici

Jay D. 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 31, 1979

John Wojcichi, Robert Golad & Halina Lampel
d/b/a Dairy Farm
678 Manhattan Ave.
Brooklyn, NY

Gentlemen:

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,

Victoria Gary

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
JOHN WOJCICKI and ROBERT GOLAD	:	
d/b/a DAIRY FARM (SELLER)	:	DETERMINATION
and	:	
HALINA LAMPEL (PURCHASER)	:	
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 December 1,	:	
through November 1, 1973.	:	

Applicants, John Wojcicki and Robert Golad d/b/a Dairy Farm, 678 Manhattan Avenue, Brooklyn, New York, and Halina Lampel, 95 Second Avenue, New York, New York, filed applications 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 December 1, 1972 through November 1, 1973 (File No. 11083).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 29, 1977 at 1:15 P.M. Applicants John Wojcicki and Robert Golad appeared pro se. Applicant Halina Lampel did not appear at the hearing. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether the Sales Tax Bureau's determination of additional taxes due against applicants John Wojcicki and Robert Golad d/b/a Dairy Farm, was proper and correct.

II. Whether the Sales Tax Bureau's determination of additional taxes due against applicant Halina Lampel was correct.

1. Applicants John Wojcicki and Robert Golad d/b/a Dairy Farm, operated a retail dairy products store at 678 Manhattan Avenue, Brooklyn, New York, from December 4, 1972 until November 1, 1973. It was then sold to applicant Halina Lampel.

2. On December 13, 1973, the Sales Tax Bureau received a Notification of Sale, Transfer or Assignment in Bulk signed by Halina Lampel, along with a check for \$105.00, in payment of sales tax on the value of the fixed assets sold. Said notification listed the total sales price of the business as \$5,000.00.

3. On June 7, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants John Wojcicki and Robert Golad d/b/a Dairy Farm, for taxes due of \$8,500.00. Said assessment was an estimate and covered the period August, 1, 1965 through November 1, 1973. It was based on applicants' failure to file sales and use tax returns and to submit information requested by the Sales Tax Bureau.

4. On June 7, 1974, the Sales Tax Bureau also issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant Halina Lampel. The Bureau assessed an amount due of \$5,000.00 which represented said applicant's liability as purchaser, pursuant to section 1141(c) of the Tax Law.

5. On June 10, 1975, the Sales Tax Bureau advised applicants that the notices of determination had been adjusted to reflect a tax due of \$2,008.59. Said amount included \$1,903.59 in sales taxes due for the period applicants John Wojcicki and Robert Golad operated the business, plus a bulk sales tax of \$105.00 due from the date on which they purchased the business. The Sales Tax Bureau determined the adjusted additional sales taxes due by estimating gross sales of \$21,190.00 per quarter and a taxable ration of 35%.

6. Applicants John Wojcicki and Robert Golad contend that the weekly gross sales figure and taxable sales ratio projected by the Sales Tax Bureau were excessive. Applicants failed to present books or records for the period in question.

They offered only an incomplete series of checks to suppliers for the months of December 1972 and January 1973, to support the contention that the weekly gross sales figure was overstated.

7. The taxable ratio used by the Sales Tax Bureau was based on the fact that applicants sold paper products, pet foods, taxable food items, cigarettes, beer, and soda; however, applicants did not sell cigarettes or beer, and soda was only sold for a limited period of time. Accordingly, a taxable ratio of 20% more accurately reflects said applicants' business activity.

8. Applicant Halina Lampel did not appear at the hearing in person or by representative.

CONCLUSIONS OF LAW

A. That under section 1138(a) of the Tax Law, where a sales tax return is not filed, or where it is filed and it is incorrect or insufficient, the amount of tax shall be determined by the Tax Commission from such information as may be available.

B. That the Sales Tax Bureau's determination of additional sales taxes due was erroneous in that the correct taxable ratio was 20% and not 35%, as more fully described in Finding of Fact "7".

C. That since applicant Halina Lampel did not appear either in person or by representative at the hearing held on September 29, 1977, her default has been duly noted.

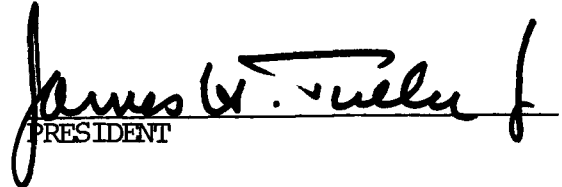
D. That the applicant of John Wojcicki and Robert Golad d/b/a Dairy Farm is granted to the extent indicated in Conclusion of Law "B"; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 7, 1974, and adjusted on June 10, 1975; and that, except as so granted, the application is in all other respects denied.

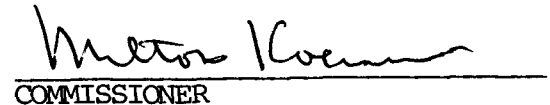
The Sales Tax Bureau shall similarly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against applicant Halina Lampel on June 7, 1974, and adjusted on June 10, 1975, pursuant to section 1141(c) of the Tax Law.

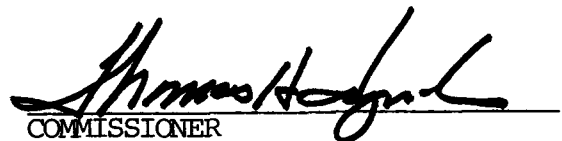
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER