

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Vivian Lorenzo :
d/b/a V. Caputo : 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 - 11/30/75. :

State of New York
County of Albany

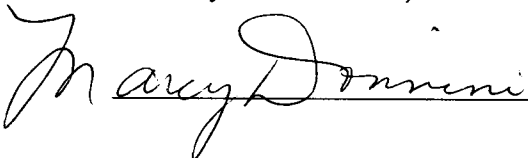
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon H. C. Pitt the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

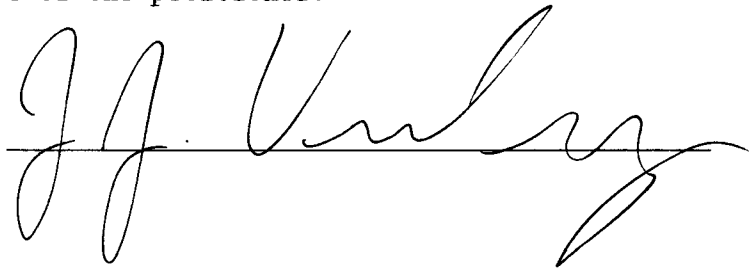
Mr. H. C. Pitt
3530 Bainbridge Ave.
Bronx, NY 10467

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
9th day of October, 1979.


Mary Dominici



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Vivian Lorenzo :
d/b/a V. Caputo : AFFIDAVIT OF MAILING
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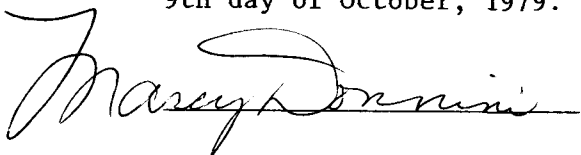
State of New York
County of Albany

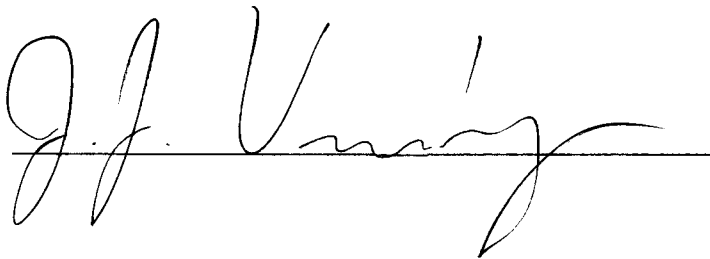
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Vivian Lorenzo, d/b/a V. Caputo, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vivian Lorenzo
d/b/a V. Caputo
155-19 Huron St.
Howard Beach, Queens, NY 11414
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.





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

October 9, 1979

Vivian Lorenzo
d/b/a V. Caputo
155-19 Huron St.
Howard Beach, Queens, NY 11414

Dear Ms. Lorenzo:

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
H. C. Pitt
3530 Bainbridge Ave.
Bronx, NY 10467
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
VIVIAN LORENZO D/B/A	:	
V. CAPUTO	:	
	:	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 December 1, 1972 through	:	
November 30, 1975.	:	

Applicant, Vivian Lorenzo d/b/a V. Caputo, 155-19 Huron Street, Howard Beach, Queens, New York 11414, 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 December 1, 1972 through November 30, 1975 (File No. 15447).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 14, 1978 at 2:45 P.M. Applicant appeared by H. C. Pitt, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau was correct in excluding from taxable sales, the actual amount charged by applicant for providing the services of a driver with a rented vehicle.

FINDINGS OF FACT

1. On April 23, 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 December 1, 1972 through November 30, 1975, in the amount of \$342.84, plus penalty and interest of \$116.75, for a total of \$459.59.

2. Applicant was engaged in the rental of trucks, and also provided the services of a driver. During the period at issue, applicant's sole customer was a telephone book distributor.

3. The Sales Tax Bureau audited rental invoices for the period September 1, 1975 through November 30, 1975. This analysis showed that applicant separately stated the charges for drivers and properly excluded such charges when computing the taxable base; however, the taxable base was computed at 82% rather than 90% (as required by the former 20 NYCRR 525.1(c) which was in effect during the audit period), since the rentals were subject to the New York City tax rate. This resulted in an understatement of taxable sales of \$9,398.00, with tax due thereon of \$814.37. The Sales Tax Bureau accepted the hourly rate billed by applicant for the drivers' time.

A review of purchase invoices disclosed that applicant was entitled to a credit of \$471.53 for sales taxes paid on the purchase of a truck which was used exclusively for rental, and also on gasoline and repairs on the rental vehicles.

4. Applicant billed the customer \$2.75 and \$3.00 per hour for drivers' services during the period at issue. Said amounts represent the gross hourly wage which applicant paid to the drivers.

5. Applicant contended that the hourly rate billed to customers was incorrect in that it did not reflect payroll costs (such as the employer's share of social security and compensation insurance) and that consequently, she had overcollected sales tax.

Applicant further contended that the Sales Tax Bureau's audit should have allowed a credit for the sales tax overcollected to the extent of the

liability determined.

CONCLUSIONS OF LAW

A. That applicant's rental invoices showed separately-stated charges for the services of a driver at the rates of \$2.75 and \$3.00 per hour; therefore, the Sales Tax Bureau was correct in excluding from taxable sales only those driver charges as shown thereon.

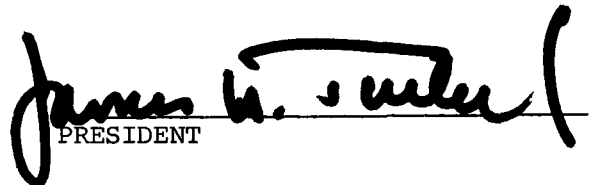
B. That the audit conducted by the Sales Tax Bureau was proper and the resultant findings were correct.

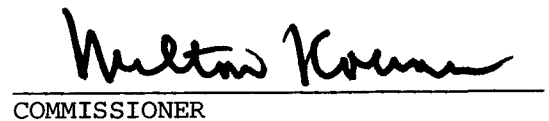
C. That the application of Vivian Lorenzo d/b/a V. Caputo is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 23, 1976 is sustained.

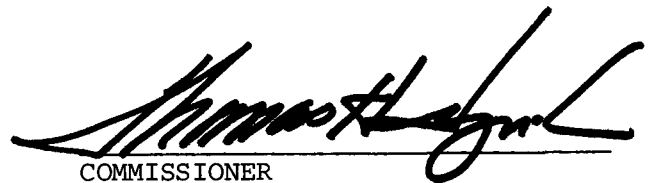
DATED: Albany, New York

STATE TAX COMMISSION

OCT 9 1979


PRESIDENT


COMMISSIONER


COMMISSIONER