

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cartagenas R & R Records Corp. :
and Hector Cartagenas, Ind. & as Officer : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Taxes :
under Article 28 & 29 of the Tax Law :
for the Period 9/1/71-8/31/74. :

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 18th day of July, 1980, he served the within notice of Determination by mail upon Cartagenas R & R Records Corp., and Hector Cartagenas, Ind. & as Officer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

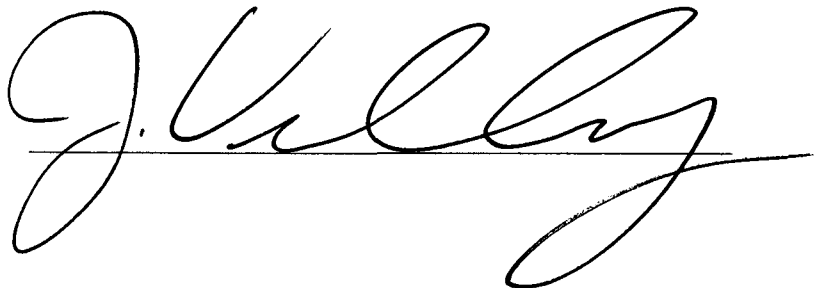
Cartagenas R & R Records Corp.
and Hector Cartagenas, Ind. & as Officer
760 E. Tremont Ave.
Bronx, NY

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
18th day of July, 1980.

Richard A. Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cartagenas R & R Records Corp. :
and Hector Cartagenas, Ind. & as Officer : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Taxes :
under Article 28 & 29 of the Tax Law :
for the Period 9/1/71-8/31/74. :

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 18th day of July, 1980, he served the within notice of Determination by mail upon Vincent R. Melloni the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

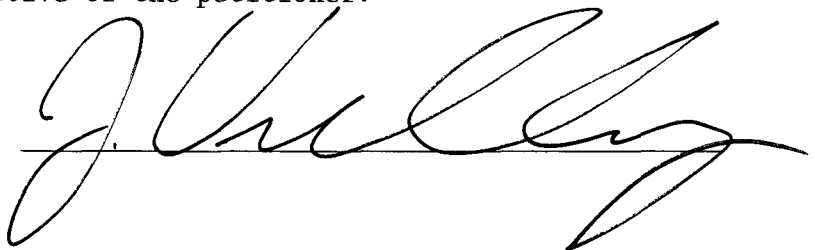
Mr. Vincent R. Melloni
2185 Grand Concourse
Bronx, NY 10453

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
18th day of July, 1980.

Deborah A Bank



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

July 18, 1980

Cartagenas R & R Records Corp.
and Hector Cartagenas, Ind. & as Officer
760 E. Tremont Ave.
Bronx, 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Vincent R. Melloni
2185 Grand Concourse
Bronx, NY 10453
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
CARTAGENAS R & R RECORDS CORP. : DETERMINATION
and :
HECTOR CARTAGENA :
Individually and as an Officer :
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 :
September 1, 1971 through August 31, 1974. :

Applicants, Cartagenas R&R Records Corp. and Hector Cartagena, individually and as an officer, 760 East Tremont Avenue, Bronx, New York, 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 September 1, 1971 through August 31, 1974 (File No. 13032).

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 September 27, 1978 at 2:45 P.M. and was continued on January 11, 1979 at 2:45 P.M. Applicants appeared by Vincent R. Melloni, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau's disallowance of applicant Cartagenas R&R Records Corp.'s nontaxable sales for the period September 1, 1971 through August 31, 1974 was correct.

FINDINGS OF FACT

1. Applicant Cartagenas R&R Records Corp. ("R&R") operated a wholesale and retail record business from two locations in the Borough of the Bronx, New York. On April 6, 1975, the business location that contained almost all of said applicant's

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

financial records was destroyed by fire.

2. Subsequent to the fire, R&R was audited by the Sales Tax Bureau. Using workpapers maintained by R&R's accountant, the Sales Tax Bureau's auditor found that for the period July 1, 1973 through August 31, 1974, R&R had understated the gross sales on the tax returns filed by 4.03%. Therefore, the auditor increased the gross sales reported on said applicant's returns filed during the audit period September 1, 1971 through August 31, 1974 by said percentage. The auditor considered R&R's gross sales to be the taxable sales, since documentation was not presented to verify the existence of nontaxable sales. As a result of the audit, R&R's reported taxable sales were increased by \$363,919.67. Consequently, an additional tax of \$25,702.36 was determined to be due.

3. On July 8, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants for the additional tax due of \$25,702.36, plus penalty and interest, for the period September 1, 1971 through August 31, 1974.

4. Following the hearing held on September 27, 1978, the Sales Tax Bureau re-audited R&R. Said applicant was able to produce resale certificates for a portion of its sales, and credit was allowed for such sales. Based on the re-audit, the Sales Tax Bureau determined that R&R's taxable sales were 74.6% of its \$560,617.00 gross sales. Giving credit for the taxable sales reported on sales tax returns, the additional taxable sales amounted to \$221,523.00.

5. R&R does not agree with the results of the Sales Tax Bureau's audit and contends the following:

- a. That it is primarily a wholesaler and, as such, only 41% of its sales should be taxable.
- b. That shipments of records were made to points outside New York State and credit should be given for these sales.

2. Subsequent to the date of the audit, the following items

have been received by the company and are included in the

financial records for 1957, to wit: (a) Cash

received from the sale of the property, \$10,000.00

(b) Proceeds from the sale of the stock, \$5,000.00

(c) Dividends received, \$1,000.00

(d) Interest received, \$500.00

(e) Other income, \$2,000.00

(f) Total, \$19,500.00

The total amount of \$19,500.00 is included in the

financial records for 1957.

3. The following items have been received by the company

and are included in the financial records for 1957:

(a) Cash received from the sale of the property, \$10,000.00

(b) Proceeds from the sale of the stock, \$5,000.00

(c) Dividends received, \$1,000.00

(d) Interest received, \$500.00

(e) Other income, \$2,000.00

(f) Total, \$19,500.00

The total amount of \$19,500.00 is included in the

financial records for 1957.

4. The following items have been received by the company

and are included in the financial records for 1957:

(a) Cash received from the sale of the property, \$10,000.00

(b) Proceeds from the sale of the stock, \$5,000.00

(c) Dividends received, \$1,000.00

(d) Interest received, \$500.00

(e) Other income, \$2,000.00

(f) Total, \$19,500.00

c. That many of its customers were vendors who were listed on the Sales Tax Bureau's master list of registered vendors; therefore, sales to such customers should be considered as sales for resale.

6. R&R failed to present any evidence to support the ratio of taxable sales. It also failed to present documentation to support out-of-state shipments and resale sales.

7. Applicants acted in good faith and cooperated throughout the audit.

CONCLUSIONS OF LAW

A. That applicant Cartagenas R&R Records Corp. failed to prove that certain sales were sales for resale as required under section 1132(c) of the Tax Law.

B. That the penalties and interest above the minimum statutory rate are cancelled.

C. That the application of Cartagenas R&R Records Corp. and Hector Cartagena, individually and as an officer, is granted to the extent indicated in Finding of Fact "4" and 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 on July 8, 1975; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

JUL 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

THE UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D. C. 20535

TO : DIRECTOR, FBI (100-441100)

FROM : SAC, NEW YORK (100-100000)

CONFIDENTIAL

RE: [Illegible]

[Illegible]

[Illegible]

100-441100

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

[Illegible]

JUL 1 8 1980

[Handwritten signatures and stamps]
JAMES H. ROY