

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Joseph T. DeAngelis :

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 6/1/72-5/31/76. :

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 17th day of October, 1980, he served the within notice of Decision by mail upon Joseph T. DeAngelis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph T. DeAngelis

18 Locust Ave.

Staten Island, NY 10306

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

17th day of October, 1980.

Rochelle A. Bank

Jay Vredenburg

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

October 17, 1980

Joseph T. DeAngelis
18 Locust Ave.
Staten Island, NY 10306

Dear Mr. DeAngelis:

Please take notice of the Decision 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
JOSEPH T. DeANGELIS
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,
1976.

DECISION

Petitioner, Joseph T. DeAngelis, 18 Locust Avenue, Staten Island, New York 10306, filed a petition 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, 1976 (File No. 17307).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 28, 1979 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether taxable sales determined and tax assessed as a result of a field audit included capital improvements jobs not subject to tax.

FINDINGS OF FACT

1. On September 22, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Joseph T. DeAngelis for the period June 1, 1972 through May 31, 1976 in the amount of \$1,860.49 tax plus penalties and interest as a result of a field audit.

2. Petitioner signed a Consent Extending Period of Limitation for Assessment for the period June 1, 1972 through November 30, 1975 to December 19, 1976.

Petitioner was on an annual status for filing his returns.

3. New York State and local sales and use tax returns were filed for the annual periods June 1, 1972 through May 31, 1973 and June 1, 1973 through May 31, 1974. No sales or use taxes were reported due. Petitioner did not file returns for the annual periods June 1, 1974 through May 31, 1975 and June 1, 1975 through May 31, 1976.

4. Petitioner was in the business of contracting for general home alterations and installation of aluminum siding. Petitioner maintained some invoices which were his only records. In the performance of the audit, the Audit Division examined all of the sales invoices that were available. It determined that 5.3 percent of the sales was repair work subject to sales tax. The Audit Division applied the taxable sales percentage to the gross sales reported for the period June 1, 1972 through May 31, 1974 and the gross sales estimated for the period June 1, 1974 through May 31, 1976. The estimated sales were based on the average of the two prior years reported. Taxable sales were determined to be \$20,790.70 for the audit period on which \$1,554.96 tax was determined due.

Purchases subject to use tax of \$253.53 and sales tax of \$52.00 erroneously charged and not remitted were also assessed; however, these items are not at issue.

5. Petitioner's records were not sufficient for the Audit Division to determine the exact amount of petitioner's sales tax liability.

6. The Audit Division conceded that certain items included in the audit results as taxable sales were in fact capital improvements. The deletion of those items reduced the taxable sales percentage to 1.5. After this concession, there were two transactions in dispute.

7. Petitioner contended that the two remaining sales were also capital improvements. He offered in evidence the remaining sales invoices at issue. Both invoices showed that repair work was performed.

8. Petitioner did not show reasonable cause for not paying over any of the tax asserted due.

CONCLUSIONS OF LAW

A. That petitioner's taxable sales percentage is reduced to 1.5 percent as found in Finding of Fact "6".

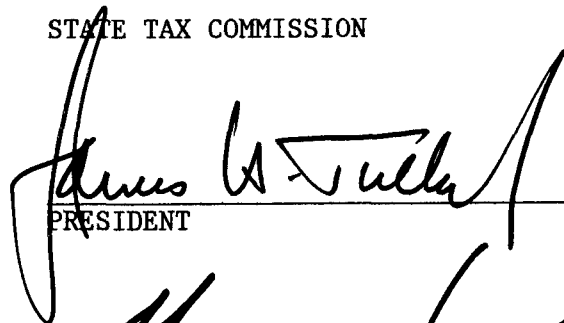
B. That except as noted above, the audit performed by the Audit Division was proper and the resultant tax due was determined from such information that was available in accordance with section 1138(a) of the Tax Law.

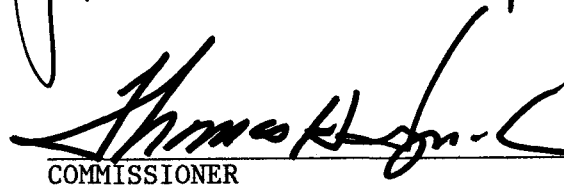
C. That the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 22, 1976 in accordance with Conclusion of Law "A" supra, with applicable penalties and interest thereon; and that, except as so granted, the petition of Joseph T. DeAngelis is in all other respects denied.


DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER