

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arthur Jacobucci & Donald Jacobucci :
d/b/a Salko Products : 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 6/1/71 - 8/31/73. :

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 6th day of June, 1980, he served the within notice of Determination by mail upon Arthur Jacobucci & Donald Jacobucci, d/b/a Salko Products, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur Jacobucci & Donald Jacobucci
d/b/a Salko Products
653 Crescent 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
6th day of June, 1980.

Joanne Krupp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Arthur Jacobucci & Donald Jacobucci :
d/b/a Salko Products : 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 6/1/71 - 8/31/73. :

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 6th day of June, 1980, he served the within notice of Determination by mail upon Albert DiGirolamo 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. Albert DiGirolamo
633 Crescent Ave.
Bronx, NY 10458

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
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

Arthur Jacobucci & Donald Jacobucci
d/b/a Salko Products
653 Crescent 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
Albert DiGirolamo
633 Crescent Ave.
Bronx, NY 10458
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
ARTHUR JACOBUCCI and DONALD JACOBUCCI	:	DETERMINATION
D/B/A SALKO PRODUCTS	:	
	:	
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, 1971 through August 31,	:	
1973.	:	

Applicants, Arthur Jacobucci and Donald Jacobucci d/b/a Salko Products, 653 Crescent 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 June 1, 1971 through August 31, 1973 (File No. 16961).

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 July 20, 1979, at 9:15 A.M. Applicants appeared by Albert DiGirolamo, Public Accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the audit performed by the Sales Tax Bureau properly reflected applicants' sales tax liability.

FINDINGS OF FACT

1. On March 12, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Arthur Jacobucci and Donald Jacobucci d/b/a Salko Products for the period June 1, 1971 through August 31, 1973, for \$5,263.20 tax, plus penalties and interest. The Notice

was issued as a result of a field audit.

2. Applicants filed a timely protest to the above Notice on May 28, 1975.

3. Applicants did not maintain sufficient books and records for the Sales Tax Bureau to determine the exact amount of the applicants' tax liability.

4. On audit, the Sales Tax Bureau determined gross sales for the audit period by increasing deposits made to applicants' checking account by 25 percent in consideration of cash used to pay expenses. Based on a test period of June through August, 1973, 48.5 percent of the deposits made was substantiated as exempt sales. The Bureau then applied the taxable percentage to gross sales to determine taxable sales and tax due thereon of \$5,263.20. Applicants filed annual returns and reported no taxable sales.

5. Applicants manufactured and distributed rug cleaner and other cleaning supplies. While primarily selling at the wholesale level, applicants did sell at retail through mail order.

6. Applicants contended a large portion of the retail sales were out-of-state sales but offered no proof to substantiate the contention.

7. Applicants made deposits of \$1,420.17 to the checking account which were not sales but were personal deposits to pay for insurance premiums. Additional evidence of exempt sales made to department stores (not available at the time of the audit) was also submitted. This evidence substantiated that 88.7 percent of the applicant's deposits constituted exempt sales.

CONCLUSIONS OF LAW

A. That the gross sales determined by the Sales Tax Bureau is reduced by \$1,775.21 (\$1,420.17 plus 25 percent) which reflects personal deposits made in applicants' checking account for insurance premiums and which has no bearing on sales.

B. That taxable sales are determined to be 11.3 percent of the audited gross sales and that the tax liability is reduced to \$1,140.79.

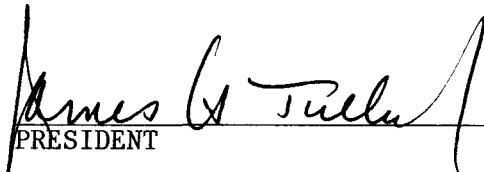
C. That except as noted in Conclusions of Law "A" and "B" above, the audit performed was proper and in accordance with section 1138(a) of the Tax Law.


D. That the application of Arthur Jacobucci and Donald Jacobucci d/b/a Salko Products is granted to the extent indicated in Conclusions "A" and "B" above. The Audit Division is directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 12, 1975. Except as so granted, the application is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 6 1980


PRESIDENT


COMMISSIONER


COMMISSIONER