

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph Puglisi :
d/b/a Mode Auto Sales : 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 12/1/72-8/31/76. :

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 14th day of March, 1980, he served the within notice of Determination by mail upon Joseph Puglisi, d/b/a Mode Auto Sales, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Puglisi
d/b/a Mode Auto Sales
400 Merrick Rd.
Amityville, NY 11701

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
14th day of March, 1980.

Janne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joseph Puglisi :
d/b/a Mode Auto Sales : 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 12/1/72-8/31/76. :

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 14th day of March, 1980, he served the within notice of Determination by mail upon Anthony Puglisi the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

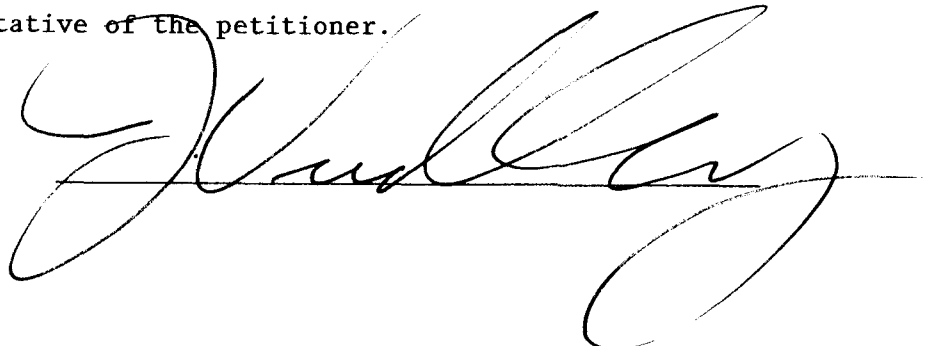
Mr. Anthony Puglisi
P.O. Box 634
Amityville, NY 11701

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
14th day of March, 1980.

Joanne Knapp



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

March 14, 1980

Joseph Puglisi
d/b/a Mode Auto Sales
400 Merrick Rd.
Amityville, NY 11701

Dear Mr. Puglisi:

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
Anthony Puglisi
P.O. Box 634
Amityville, NY 11701
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
JOSEPH PUGLISI	:	DETERMINATION
d/b/a MODE AUTO SALES	:	
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	:	
August 31, 1976.	:	

Applicant, Joseph Puglisi d/b/a Mode Auto Sales, 400 Merrick Road, Amityville, New York 11701, 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 August 31, 1976 (File No. 17767).

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 March 19, 1979 at 2:45 P.M. and was continued on September 17, 1979 at 2:45 P.M. Applicant appeared by his son, Anthony Puglisi. The Audit Division appeared by Ralph J. Vecchio, Esq.. (Irwin Levy and Samuel Freund, Esqs., of counsel).

ISSUE

Whether the Audit Division's determination of additional sales taxes due, based on an audit of applicant's available records, was correct.

FINDINGS OF FACT

1. Applicant, Joseph Puglisi d/b/a Mode Auto Sales, was engaged in the purchase and sale of used cars.

2. On February 10, 1977, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$20,011.79, plus penalty and interest of \$8,668.94, for a total of \$28,680.73 for the period December 1, 1972 through August 31, 1976.

3. On audit, the only records available to the Audit Division were incomplete sales invoices for 1976 and a police book which contained information on motor vehicles purchased and sold from December, 1975 to September, 1976. Applicant alleged that all other books and records were stolen on November 22, 1975. The auditor analyzed the police book for the period March 1, 1976 through May 31, 1976 and determined that applicant sold 94 automobiles during said period. A review of the sales invoices disclosed that sales tax was collected on the sale of 70 automobiles. The sales for these 70 transactions were \$30,050.00. Applicant substantiated that 22 of the remaining 24 sales were for resale. The two disallowed nontaxable sales amounted to \$1,125.00, resulting in total taxable sales of \$31,175.00 for the test period. Applicant reported taxable sales of \$10,982.00 for the same period, leaving additional taxable sales of \$20,193.00 which represented a margin of error of 183.87 percent. The margin of error was applied to reported taxable sales for the audit period to determine the sales tax deficiency of \$19,570.79.

The Audit Division also assessed use tax of \$441.00 on the purchase of a mobile home for which applicant erroneously issued a resale certificate.

4. On March 20, 1979, applicant paid the use tax of \$441.00 plus applicable penalties and interest on the purchase of the mobile home.

5. Applicant offered no evidence to show that the Audit Division's determination was inaccurate.

CONCLUSIONS OF LAW

A. That based on the information provided by applicant to the Audit Division, the audit was properly conducted in accordance with section 1138(a) of the Tax Law and that the resultant findings were correct.

B. That in accordance with Finding of Fact No. "4", the use tax assessed for \$441.00 is cancelled.

C. That the application of Joseph Puglisi d/b/a Mode Auto Sales is granted to the extent indicated in Conclusion of Law "B". The Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 10, 1977; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER