

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
William Rao :  
d/b/a Rao's Suburban Sanitation : 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 8/1/65 - 5/31/77. :

State of New York  
County of Albany

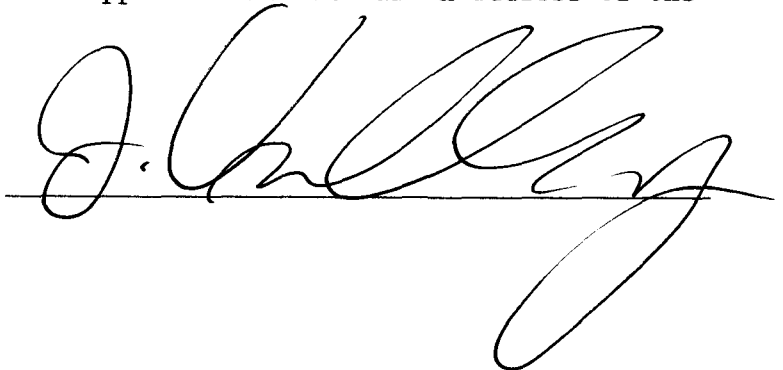
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of February, 1980, he served the within notice of Determination by mail upon William Rao, d/b/a Rao's Suburban Sanitation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Rao  
d/b/a Rao's Suburban Sanitation  
P.O. Box 291  
Hopewell Junction, NY 12533  
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  
13th day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
William Rao :  
d/b/a Rao's Suburban Sanitation : 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 13th day of February, 1980, he served the within notice of Determination by mail upon Rudolph P. Russo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

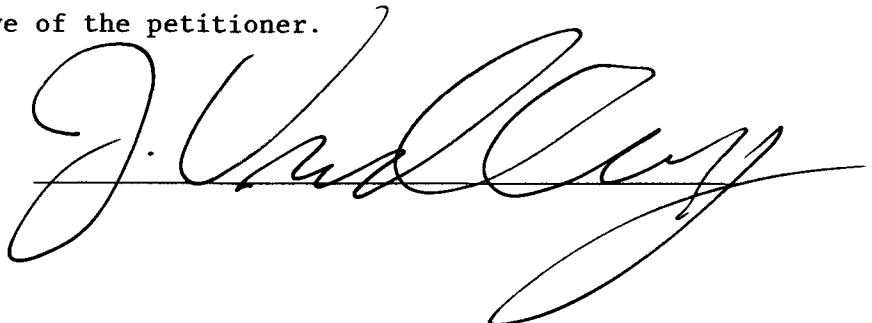
Mr. Rudolph P. Russo  
35 Market St.  
Poughkeepsie, NY 12601

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  
13th day of February, 1980.

Joanne Knapp



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

February 13, 1980

William Rao  
d/b/a Rao's Suburban Sanitation  
P.O. Box 291  
Hopewell Junction, NY 12533

Dear Mr. Rao:

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  
Rudolph P. Russo  
35 Market St.  
Poughkeepsie, NY 12601  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
WILLIAM RAO	:	DETERMINATION
D/B/A RAO'S SUBURBAN SANITATION	:	
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 August 1, 1965	:	
through May 31, 1977.	:	

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Applicant, William Rao, d/b/a Rao's Suburban Sanitation, P.O. Box 291, Hopewell Junction, New York 12533, 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 August 1, 1965 through May 31, 1977 (File No. 21063).

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 December 1, 1978 at 10:45 A.M. Applicant appeared by Rudolph P. Russo, Esq. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether the receipts from applicant's activities as a trash collector are subject to sales tax.

II. Whether the Audit Division's audit properly reflected applicant's taxable receipts.

III. Whether the penalties and interest in excess of the minimum statutory rate should be cancelled.

FINDINGS OF FACT

1. Applicant, William Rao d/b/a Rao's Suburban Sanitation, operated a trash removal business servicing commercial buildings, municipalities, school districts and private homes.
2. Applicant was not registered for sales tax purposes and did not file sales tax returns for the period in issue.
3. On September 15, 1977, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant assessing sales tax due in the sum of \$22,494.79, plus penalty and interest for the period August 1, 1965 through May 31, 1977.
4. On audit, the Audit Division examined applicant's sales for 1976 and determined that 54.57 percent of the sales were taxable (the balance of the sales were made to exempt organizations). In the absence of adequate sales records, the auditor then determined that applicant's bank deposits constituted gross sales. The auditor applied the 54.57 percent rate to gross sales for the period August 1, 1965 through May 31, 1977 to arrive at audited taxable sales of \$557,550.00. This audit method resulted in additional tax due of \$22,494.79.
5. Applicant contended that he was not aware nor was he ever advised that the receipts from his trash removal service were taxable. He also contended that prior to 1976 (the period for which sales were examined) his sales to exempt organizations ranged from 65 percent to 90 percent. Applicant testified that he had no documentary evidence (other than the 1976 records he made available at the audit) to indicate which customers he serviced.

CONCLUSIONS OF LAW

A. That the receipts from applicant's trash removal service are subject to the imposition of sales tax within the meaning and intent of section 1105(c)(5) of the Tax Law.

B. That section 1132(c) of the Tax Law states in part that for the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section 1105 are subject to tax until the contrary is established. The burden of proving that any receipt is not taxable hereunder shall be on the person required to collect tax or the customer. That applicant has failed to sustain the burden of proof showing that the receipts deemed taxable by the Audit Division were in fact not subject to tax.

C. That section 1138(a) of the Tax Law states in part that if a return required by this article is not filed, the amount of tax due shall be determined by the State Tax Commission from such information as may be available. That the Audit Division has properly determined applicant's sales tax liability in accordance with the meaning and intent of section 1138(a) of the Tax Law.

D. That the circumstances in this matter indicate that the failure to register, the failure to file returns and the failure to pay the tax was not excusable; therefore, the penalties and interest were properly imposed pursuant to section 1145 of the Tax Law.


E. That the application of William Rao d/b/a Rao's Suburban Sanitation is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 15, 1977 is sustained.

DATED: Albany, New York

**FEB 13 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER