

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
John Susinno :  
d/b/a Bradock Furniture Co. : 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 6/1/67-8/31/67. :

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 11th day of April, 1980, he served the within notice of Determination by mail upon John Susinno, d/b/a Bradock Furniture Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

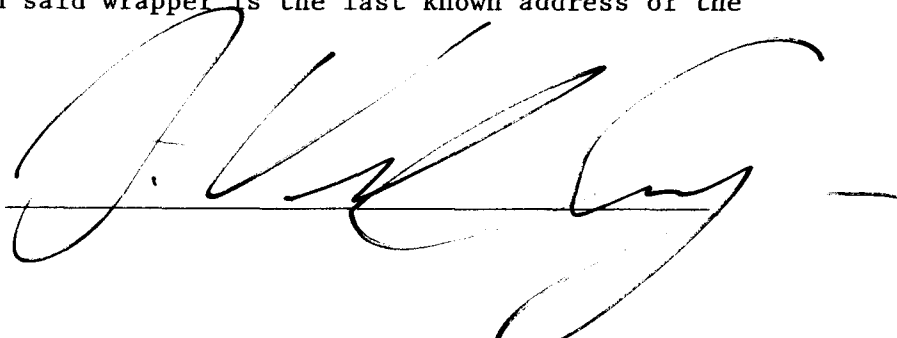
John Susinno  
d/b/a Bradock Furniture Co.  
10120 Brownwood Ave.  
Orlando, FL 32807

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  
11th day of April, 1980.

Joanne Knapp

A large, stylized handwritten signature, likely of Jay Vredenburg, is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke at the end.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
John Susinno :  
d/b/a Bradock Furniture Co. : 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 6/1/67-8/31/67. :

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 11th day of April, 1980, he served the within notice of Determination by mail upon Harry Bloom the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

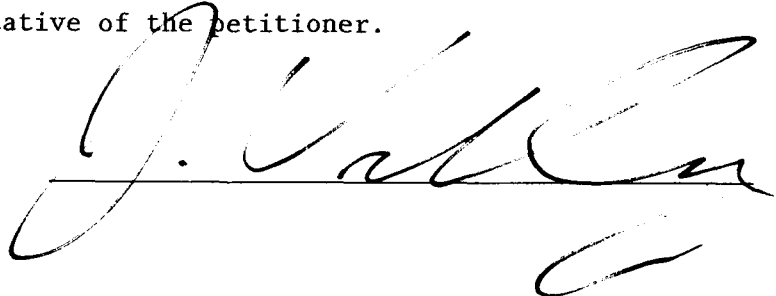
Mr. Harry Bloom  
220-55 46th Ave.  
Bayside, NY 11361

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  
11th day of April, 1980.

Joanne Knapp



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

April 11, 1980

John Susinno  
d/b/a Bradock Furniture Co.  
10120 Brownwood Ave.  
Orlando, FL 32807

Dear Mr. Susinno:

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) 1139 & 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  
Harry Bloom  
220-55 46th Ave.  
Bayside, NY 11361  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
JOHN SUSINNO	:	DETERMINATION
d/b/a BRADOCK FURNITURE CO.	:	
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, 1967	:	
through August 31, 1967.	:	

---

Applicant, John Susinno d/b/a Bradock Furniture Co., 10120 Brownwood Avenue, Orlando, Florida 32807, 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, 1967 through August 31, 1967 (File No. 17510).

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 21, 1979 at 9:15 A.M. Applicant appeared by Harry Bloom, Accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq. of counsel).

ISSUE

Whether the Sales Tax Bureau properly determined applicant's sales tax liability for the period June 1, 1967 through August 31, 1967.

FINDINGS OF FACT

1. On June 28, 1968, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period June 1, 1967 through August 31, 1967 in the amount of \$1,000.00, plus penalty and interest of \$120.00, for a total of \$1,120.00.

Said notice was issued as a result of applicant's failure to file a sales tax return for the aforementioned period. The Sales Tax Bureau estimated the amount of tax due pursuant to section 1138(a) of the Tax Law.

2. Applicant operated a retail furniture store at 236-01 Bradock Avenue, Bellerose, New York. The business was discontinued and the premises were vacated in September, 1967.

3. In 1976, applicant contracted for the sale of his residence. Prior to the closing on the property, the Sales Tax Bureau placed a lien upon the property for unpaid sales taxes. On July 12, 1976, applicant paid \$2,090.00 consisting of \$1,000.00 in tax and \$1,090.00 in penalties and interest accrued thereon in order to satisfy the lien.

4. On September 15, 1976, applicant filed an Application for Credit or Refund of State and Local Sales or Use Tax for \$1,900.00. Applicant requested said refund on the grounds that his actual sales tax liability for the period ending August 31, 1967 was \$190.00 based on sales of \$3,800.00 and that since \$2,090.00 was paid, he was entitled to a refund of \$1,900.00.

5. On December 13, 1976, the Sales Tax Bureau denied the refund claim.

6. Applicant filed an application for revision of said refund denial.

7. Applicant contended that when the business was discontinued, his inventory was valued at \$7,000.00 and was disposed of by selling \$600.00 worth of inventory at cost and \$6,400.00 worth of inventory to various individuals at one-half the cost (\$3,200.00) yielding total sales of \$3,800.00. Applicant was not able to substantiate that there were no other sales made during the period at issue.

8. Applicant filed a sales tax return for the period December 1, 1966 through February 28, 1967 showing gross sales and taxable sales of \$4,826.00.

CONCLUSIONS OF LAW

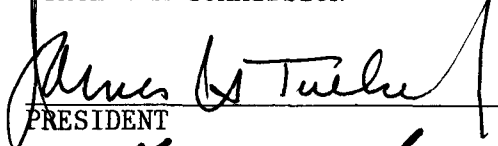
A. That applicant failed to timely file a sales tax return for the period June 1, 1967 through August 31, 1967 and as such, the Sales Tax Bureau properly issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in accordance with the provisions of section 1138(a) of the Tax Law. However, the amount of tax estimated on said notice was excessive in that the Sales Tax Bureau did not give consideration to applicant's sales reported on previous sales tax returns. That based on the value of applicant's inventory liquidated in August 1967 and a consideration that other sales may have been made during the period at issue, a more reasonable estimate of applicant's sales for the period June 1, 1967 through August 31, 1967, is \$10,000 and tax due thereon of \$500.00.

B. That the application of John Susinno d/b/a Bradock Furniture Co. is granted to the extent that the sales tax due for the period June 1, 1967 through August 31, 1967 is reduced to \$500.00 plus penalty and interest accrued to July 12, 1976; 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 June 28, 1968 and refund the amount of overpayment; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York

APR 11 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER