

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lawrence DeCamillo :
d/b/a Lorenzo Pizza : 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 Periods 6/1/72 - 5/31/75. :

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 16th day of January, 1981, he served the within notice of 1138 & 1243 by mail upon Lawrence DeCamillo, d/b/a Lorenzo Pizza, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence DeCamillo
d/b/a Lorenzo Pizza
12 Pine Ave.
Pelham, NY 10803

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
16th day of January, 1981.

Cornie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lawrence DeCamillo :
d/b/a Lorenzo Pizza : 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 Periods 6/1/72 - 5/31/75. :

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 16th day of January, 1981, he served the within notice of 1138 & 1243 by mail upon Salvatore M. Cassara 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. Salvatore M. Cassara
556 North Ave.
New Rochelle, NY 10801

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
16th day of January, 1981.

Conrad G. Haglund

J. Vredenburg

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

January 16, 1981

Lawrence DeCamillo
d/b/a Lorenzo Pizza
12 Pine Ave.
Pelham, NY 10803

Dear Mr. DeCamillo:

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
Salvatore M. Cassara
556 North Ave.
New Rochelle, NY 10801
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
LAWRENCE DE CAMILLO	:	DETERMINATION
d/b/a LORENZO PIZZA	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Periods June 1, 1972	:	
through May 31, 1975.	:	

Applicant, Lawrence De Camillo d/b/a Lorenzo Pizza, 12 Pine Avenue, Pelham, New York 10803, 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 periods June 1, 1972 through May 31, 1975 (File No. 15038).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 21, 1978. Applicant appeared by Salvatore M. Cassara, CPA. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

- I. Whether the method used on audit for determining additional taxable sales was correct.
- II. Whether the mark-up on purchases of pizza ingredients was excessive.
- III. Whether penalty and additional interest should be waived.

FINDINGS OF FACT

1. During the periods in issue, applicant, Lawrence De Camillo, owned and operated a retail pizza shop at 253-19 Union Turnpike, Glen Oaks, New

York, under the name of Lorenzo Pizza. Applicant made and sold only one size and type of pizza, a 16-inch, 8-slice pie for \$3.25. He also sold soda and ices. On August 8, 1975, applicant executed a consent extending the time within which to issue an assessment to September 20, 1976, with respect to the taxable periods June 1, 1972 through May 31, 1975.

2. On April 19, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to applicant for \$10,009.30 in tax, plus penalty and interest of \$3,985.06, for a total of \$13,994.36 for the period June 1, 1972 to May 31, 1975. This was based on a field audit which disclosed additional taxable sales. Applicant filed a timely application for revision of said determination.

3. The audit was conducted at the offices of applicant's accountant. Records available for audit included a day-book, accountant's workpapers, Federal tax returns and sales tax returns. The sales tax returns were prepared by the accountant. The vendor's records were incomplete. It was found on audit that gross sales as per returns were estimated. A comparison of gross sales as reported on the returns with those as recorded in the day-book indicated that out of ten quarters in issue, applicant recorded a total of \$17,142.20 more in gross sales in the day-book than he reported on sales tax returns for said periods. The examiner estimated markups. Purchases of pizza ingredients were marked up 400 percent and purchases of soda, syrup and ices were marked up 255 percent. This resulted in adjusted taxable sales of \$234,977.50. Applicant reported taxable sales of \$96,829.00. The difference of \$138,168.50 was assessed. Applicant is not contesting the markup on soda, syrup and ices.

4. Applicant contends that the markup on pizza ingredients of 400 percent is excessive. Applicant claims that he sells a pizza pie for \$3.25 and that

the cost of ingredients is as follows:

Mozzarella - 1 lb. cheese - \$1.08 per lb.	\$1.08	
Flour - \$16.00 - 100 lb. bag, makes 60 pizzas	.27	
Tomato Sauce - \$.70 a can, for 2 pizzas	<u>.35</u>	
TOTAL	\$1.70	
MARKUP		91 percent

The Audit Division claims that the approximate cost of ingredients per pizza pie, as supplied from information from the Bronx District Office is as follows:

Dough - \$16.00 - 100 lb. bag flour, 1 lb of flour makes 1½ lbs. of dough	\$.1920	
Mozzarella Cheese - \$.92 per lb. - ½ lb. per pizza	.4600	
Sauce - \$2.25 per gallon - \$.0176 per oz. - 8 oz. per pizza	.1408	
Other Ingredients	<u>.0500</u>	
TOTAL	\$.8428	
MARKUP		287 percent

5. Reasonable cause exists for a waiver of penalty and a reduction of maximum interest, since applicant relied on the advice of his accountant.

CONCLUSIONS OF LAW

A. That the 400 percent markup on pizza ingredients is excessive; that the markup, as claimed by applicant, is too low; that a fair and reasonable markup would be 192 percent based on the cost of ingredients as follows:

Flour	\$.21
Cheese	.60
Sauce	.25
Other Ingredients	<u>.05</u>
	\$ 1.11

B. That interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law are waived.

C. That the method used by the auditor to determine additional taxable sales was correct and proper, and not arbitrary or unreasonable.

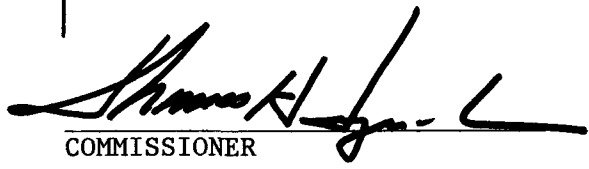
D. That the application of Lawrence De Camillo d/b/a Lorenzo Pizza, is granted to the extent indicated in Conclusion of Law "A" and "B", supra; that the Audit Division is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 19, 1976; but that, except as so granted, the application is in all other respects denied.

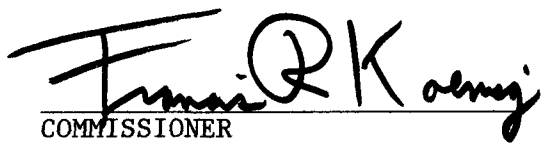
DATED: Albany, New York

JAN 16 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU

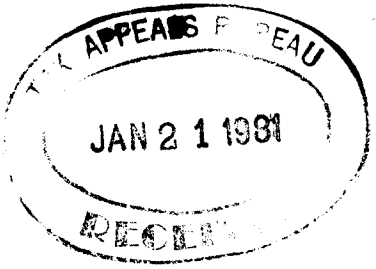
STATE CAMPUS

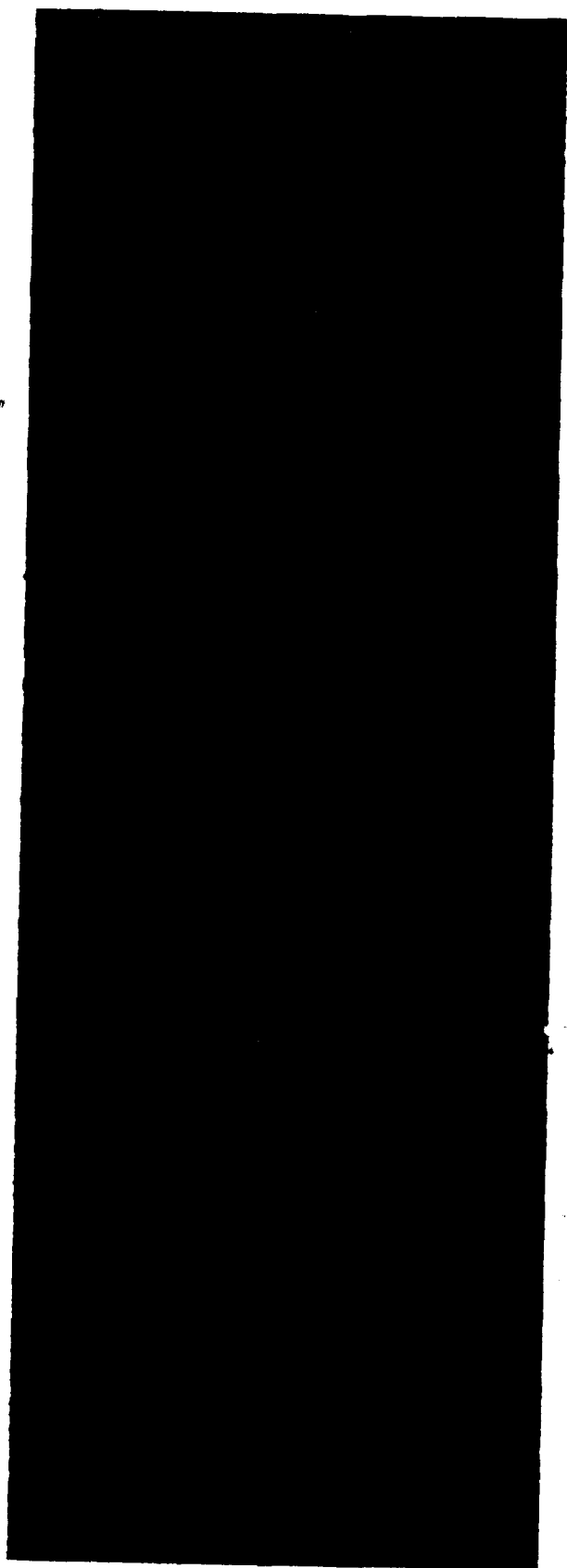
ALBANY, N. Y. 12227

[Faint, illegible handwritten text]

Salvatore M. Cassara
556 North Ave.
New Rochelle, NY 10801

Representatives
Copy.





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

January 16, 1981

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12 Pine Ave.
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STATE OF NEW YORK

STATE TAX COMMISSION

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MARKUP 91 percent

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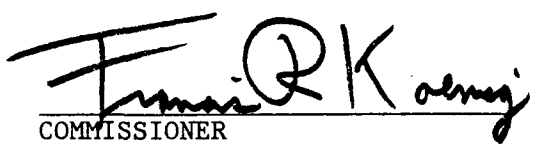
DATED: Albany, New York

JAN 16 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER