

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
Felix Figueroa  
d/b/a F & S Records

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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 6/1/76-2/28/79.

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 August, 1981, he served the within notice of Decision by mail upon Felix Figueroa, d/b/a F & S Records, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Felix Figueroa  
d/b/a F & S Records  
19 Humboldt St.  
Brooklyn, NY 11206

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 August, 1981.

*Annmarie A. Haglund*

*J. Vredenburg*

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

August 14, 1981

Felix Figueroa  
d/b/a F & S Records  
19 Humboldt St.  
Brooklyn, NY 11206

Dear Mr. Figueroa:

Please take notice of the Decision 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
FELIX FIGUEROA	:	DECISION
D/B/A F & S RECORDS	:	
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, 1976	:	
through February 28, 1979.	:	

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Petitioner, Felix Figueroa, d/b/a F & S Records, 19 Humboldt Street, Brooklyn, New York 11206, filed a petition 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, 1976 through February 28, 1979 (File No. 28367).

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 February 26, 1981 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division, in the absence of books and records, properly estimated petitioner's taxable sales and sales taxes due.

FINDINGS OF FACT

1. Petitioner, Felix Figueroa, d/b/a F & S Records, operated a record and tape store located at 19 Humboldt Street, Brooklyn, New York.
2. On September 29, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period June 1, 1976 through February 28, 1979 for taxes due of \$1,851.20, plus minimum statutory interest of \$276.13, for a total of \$2,127.33. Said

Notice was issued as a result of petitioner's failure to submit books and records for audit.

3. Petitioner did not maintain any books and records for the business operation. Therefore, the Audit Division took a physical inventory and found 700 records and tapes on hand. The number of records and tapes were multiplied by selling prices provided by petitioner to determine sales of \$2,500.00. The Audit Division estimated that this inventory would turn over quarterly and thus arrived at total sales of \$27,500.00 for the audit period and tax due thereon of \$2,200.00. Petitioner paid sales taxes of \$348.80, leaving additional taxes due of \$1,851.20.

4. Petitioner, for health reasons, is unemployed. Petitioner argued that the store is only open on Friday and Saturday and generated very little income. Petitioner stated that his wife's income from full-time employment is the primary source of support for himself and family.

5. Petitioner offered no evidence to show that the sales determined by the Audit Division were incorrect or that the basis upon which such sales were determined was unreasonable.

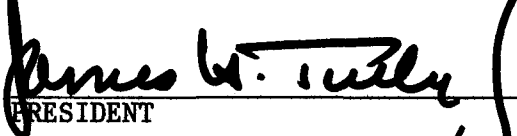
#### CONCLUSIONS OF LAW

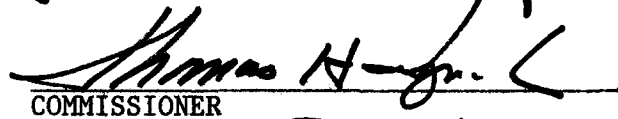
A. That section 1138(a) of the Tax Law provides, in part, that, if necessary, tax may be estimated on the basis of external indices, such as stock on hand. That since petitioner did not maintain books and records, the Audit Division had no alternative but to adopt such procedure which was proper under the circumstances herein. That it was petitioner's own failure to maintain proper books and records and as such, exactness in the determination of sales tax liability was not required Matter of Markowitz v. State Tax Commission, 54 A.D. 2d 1023.

B. That the petition of Felix Figueroa, d/b/a F & S Records is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 29, 1979 is sustained.

DATED: Albany, New York  
AUG 14 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER