

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Christine Martorano, Stephen Martorano & :
Josephine Martorano :
d/b/a Tina's Restaurant : 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:
12/1/71 - 11/30/76.

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 30th day of October, 1981, he served the within notice of Decision by certified mail upon Christine Martorano, Stephen Martorano & Josephine Martorano, d/b/a Tina's Restaurant the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Christine Martorano, Stephen Martorano &
Josephine Martorano
d/b/a Tina's Restaurant
73 Bridge St.
Brooklyn, NY 11201

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
30th day of October, 1981.




STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Christine Martorano, Stephen Martorano & :
Josephine Martorano :
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State of New York
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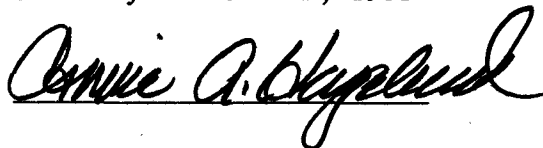
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon David M. Markowitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

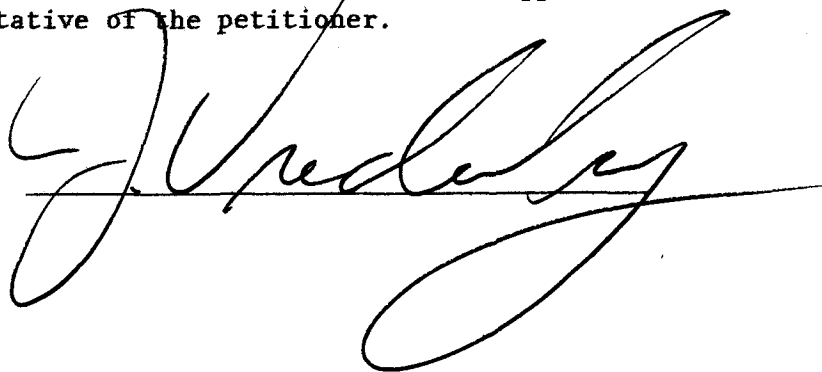
David M. Markowitz
225 Broadway
New York, NY 10007

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
30th day of October, 1981.





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

October 30, 1981

Christine Martorano, Stephen Martorano &
Josephine Martorano
d/b/a Tina's Restaurant
73 Bridge St.
Brooklyn, NY 11201

Gentlemen:

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
David M. Markowitz
225 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHRISTINE MARTORANO, STEPHEN MARTORANO & JOSEPHINE MARTORANO d/b/a TINA'S RESTAURANT	:	DECISION
for Revision of a Determination or for Refund of Sales & Use Taxes under Articles 28 and 29 of the Tax Law for the Period December 1, 1971 through November 30, 1976.	:	

Petitioners, Christine Martorano, Stephen Martorano and Josephine Martorano, doing business as Tina's Restaurant, 73 Bridge Street, Brooklyn, New York 11201, 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 December 1, 1971 through November 30, 1976 (File No. 20519).

A formal hearing was held before Nigel Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 9, 1981. The petitioners appeared by David M. Markowitz, Esq. The Audit Division appeared by Ralph Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioners Stephen Martorano, Josephine Martorano and Christine Martorano were persons required to collect and pay over sales taxes as described in section 1131, subdivision 1 of the Tax Law and whether they are therefore liable for said taxes under section 1133(a) of the Tax Law for the period at issue.

II. Whether a determination against petitioners Stephen Martorano and Josephine Martorano for the periods ending on or before May 31, 1974 is barred by the three-year limitation period provided in section 1147(b) of the Tax Law.

FINDINGS OF FACT

1. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on July 19, 1977 to Tina's Restaurant, 73 Bridge Street, Brooklyn, New York and to Christine Martorano, Stephen Martorano and Josephine Martorano. This was for the period December 1, 1971 through November 30, 1976 and was in the amount of \$40,142.43, plus penalty and interest of \$23,591.47, for a total of \$63,733.90.

2. Tina's Restaurant is a small luncheonette, with tables, located in Brooklyn, New York. It has two cash registers.

3. Tina's Restaurant filed New York State and local sales and use tax returns for the period under review. The return for the quarterly period ended November 30, 1972 was signed by petitioner Christine Martorano as owner of Tina's Restaurant.

4. A consent was signed by Christine Martorano on December 23, 1974 extending the period of limitation for an assessment to September 30, 1975. A consent for a further one year extension was signed by her on September 24, 1975. A consent for a further extension to September 20, 1977 and still another for an additional year were signed by her on August 9, 1976 and June 30, 1977, respectively.

5. Tina's Restaurant was a sole proprietorship owned and operated during the years in question by Christine Martorano (it has recently been sold). A Certificate of Doing Business under the name of Tina's Restaurant was filed by her on July 30, 1965. A beer license issued by the State Liquor Authority from

year to year was in the name of Christine Martorano d/b/a Tina's Restaurant from at least June 30, 1972 through June 30, 1976. Christine Martorano worked in the restaurant from the time it opened until her mother became blind. She then left the operation of the restaurant to her brother, Stephen Martorano. The date that this happened is not stated in the record.

6. The petitioners did not contest the determination against Tina's Restaurant for the taxes at issue herein nor did they contest the liability of Christine Martorano as owner of that business.

7. Stephen Martorano is the brother of Christine Martorano. After Christine Martorano ceased managing the business, he was the manager of the business for an unstated length of time.

8. a. Josephine Martorano is the sister-in-law of Christine Martorano. Josephine Martorano was married to Stephen Martorano until 1959, when they were divorced. Josephine Martorano now lives in the same building as Stephen Martorano. Josephine Martorano worked in the restaurant as an employee, making sandwiches, and handling the cash register on sandwich sales. She also paid for purchases from suppliers from the cash register. Her employment occurred, as she testified, after her husband Stephen had had a heart attack and could not himself continue his own duties. She was, therefore, the only family member on the premises.

b. The property at 73 Bridge Street, occupied by Tina's Restaurant was owned by Josephine Martorano from August 29, 1973 to November 21, 1977. She paid \$32,000.00 for it which she raised by a \$25,000.00 bank mortgage; a \$5,000.00 loan and \$115.00 in cash from her brother Anthony Tesoriero in Florida; \$5,000.00 as her share of a \$10,000.00 bank loan to herself and her sister-in-law Mary Rollo; and \$3,886.90 received from a \$4,500.00 bank loan.

She sold this property for \$40,000.00. While she owned the property, the restaurant paid her rent of \$150.00 a month.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law states that every person required to collect sales tax shall be personally liable for the amount of tax due. Section 1131(1) further defines "persons required to collect tax" as including any vendor of tangible personal property. There was no evidence presented that petitioners, Stephen Martorano and Josephine Martorano, were partners or in any way owners of Tina's Restaurant. These two petitioners were merely acting as agents or employees of the vendor and as such were not persons required to collect the tax as described in section 1131(1) of the Tax Law.

B. That in light of Conclusion of Law "A" above, the issue with respect to the expiration of the period of limitations has become moot.

C. That the assessment against Christine Martorano must necessarily be sustained in that she was in fact the vendor of tangible personal property and as such was a person required to collect sales tax under section 1131(1) of the Tax Law and is therefore liable for the tax under section 1133(a) of the Tax Law.

D. That the petition of Stephen Martorano and Josephine Martorano is granted. That the petition of Christine Martorano is denied.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

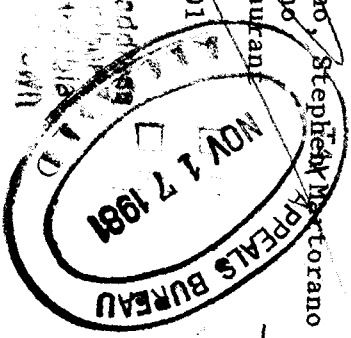
B + 11/19/81

*Forw. to
Appeals*

*B
11/19/81*

Christine Martorano, Stephen Martorano &
Josephine Martorano
d/b/a Tina's Restaurant
73 Bridge St.
Brooklyn, NY 11201

☐ Moved, left no address
☐ No longer in business
☒ Moved to [illegible]
☐ A [illegible]



REQUEST FOR BETTER ADDRESS

Requested by <i>Do</i> <i>Sean Schultz</i>	Unit <i>Catender</i>	Date of Request <i>11/19/81</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>?</i>	Date of Petition <i>?</i>
Name <i>Christina Martano, Stephen Martano +</i>	
Address <i>Josephine Martano</i> <i>2161A Jina's Restaurant</i> <i>73 Bridge St</i> <i>Brooklyn N.Y. 11201</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	<i>60 076#</i> <i>79 015#</i> <i>078#</i> <i>077#</i>

Searched by <i>SL</i> <i>mf</i>	Section <i>M I</i> <i>M I</i>	Date of Search <i>11-20-81</i> <i>11-20-81</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

October 30, 1981

Christine Martorano, Stephen Martorano &
Josephine Martorano
d/b/a Tina's Restaurant
73 Bridge St.
Brooklyn, NY 11201

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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
David M. Markowitz
225 Broadway
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
CHRISTINE MARTORANO, STEPHEN MARTORANO & JOSEPHINE MARTORANO d/b/a TINA'S RESTAURANT	:	DECISION
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B. That in light of Conclusion of Law "A" above, the issue with respect to the expiration of the period of limitations has become moot.

C. That the assessment against Christine Martorano must necessarily be sustained in that she was in fact the vendor of tangible personal property and as such was a person required to collect sales tax under section 1131(1) of the Tax Law and is therefore liable for the tax under section 1133(a) of the Tax Law.

D. That the petition of Stephen Martorano and Josephine Martorano is granted. That the petition of Christine Martorano is denied.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER