

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Quirino Iaboni :

d/b/a Goody's Deli

: 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 3/1/74 - 10/12/76. :

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 1st day of May, 1981, he served the within notice of Decision by mail upon Quirino Iaboni, d/b/a Goody's Deli, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Quirino Iaboni
d/b/a Goody's Deli
134-01 101st Ave.
Richmond Hill, NY 11419

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
1st day of May, 1981.

Annie A. Haglund

In the Matter of the Petition :
of :
Quirino Iaboni :
d/b/a Goody's Deli :
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 3/1/74 - 10/12/76. :

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 1st day of May, 1981, he served the within notice of Decision by mail upon Frank Coniglio the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

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
1st day of May, 1981.

James P. Hagelberg

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

May 1, 1981

Quirino Iaboni
d/b/a Goody's Deli
134-01 101st Ave.
Richmond Hill, NY 11419

Dear Mr. Iaboni:

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
Frank Coniglio
585 Stewart Ave.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
QUIRINO IABONI	:	DECISION
d/b/a GOODY'S DELI	:	
	:	
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 March 1, 1974 through	:	
October 12, 1976.	:	

Petitioner, Quirino Iaboni d/b/a Goody's Deli, 134-01 101st Avenue, Richmond Hill, New York 11419, 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 March 1, 1974 through October 12, 1976 (File No. 24143).

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 October 21, 1980 at 2:45 P.M. Petitioner appeared by Frank Coniglio, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the audit procedures and tests used by the Audit Division to determine petitioner's taxable sales were proper and the resultant findings correct.

FINDINGS OF FACT

1. Petitioner, Quirino Iaboni d/b/a Goody's Deli, operated a grocery and delicatessen located at 51-39 69th Street, Woodside, New York. The business was sold on October 12, 1976.

2. On March 25, 1977, the Audit Division received a completed Bulk Sale Questionnaire from petitioner. A review of said questionnaire indicated that 65 percent of purchases for the period December 1, 1975 through October 12, 1976 were items that would be subject to tax when sold. Petitioner's sales tax returns filed for the same period showed that taxable sales were 17 percent of gross sales. Additionally, taxable purchases for the period were \$9,202.00 as compared to taxable sales reported of \$3,746.00. Therefore, the Audit Division applied 65 percent to gross sales reported for the entire audit period to determine taxable sales of \$52,708.00. Petitioner reported taxable sales of \$13,541.00, leaving additional taxable sales of \$39,167.00 and tax due thereon of \$3,064.94.

3. On May 6, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period March 1, 1974 through October 12, 1976 for taxes due of \$3,064.94, plus penalty and interest of \$1,347.60, for a total of \$4,412.54.

4. Petitioner filed an application for a hearing to review the above determination.

5. At a district office conference, petitioner produced the following records: Federal income tax returns for the years 1974, 1975 and 1976, day book of sales, sales tax returns, and some cancelled checks during the period at issue. The district office representative found gross sales reported on the Federal income tax returns for 1975 and 1976 were approximately \$28,000.00 greater than sales per the day book and the sales tax returns. The representative also determined that the records provided by petitioner were insufficient to recommend an adjustment to the tax previously determined.

6. Petitioner argued that information on the bulk sale questionnaire is applicable only for the periods indicated thereon and is not a proper basis for determining taxes due for other periods. Petitioner maintained that its sales tax returns filed for the period at issue accurately reflect the actual sales taxes due.

Petitioner offered no substantial evidence to show that the Audit Division's determination was incorrect.

7. Petitioner's books and records were insufficient for the Audit Division to determine the exact amount of petitioner's taxable sales or to conduct a complete audit.

8. Reasonable cause does not exist for the abatement of penalty and interest.

CONCLUSIONS OF LAW

A. That since petitioner did not maintain sufficient books and records as indicated in Finding of Fact "7", the Audit Division's resort to a test period to determine petitioner's taxable sales for the period March 1, 1974 through October 12, 1976 was proper in accordance with section 1138(a) of the Tax Law, and the resultant findings of additional taxes due of \$3,064.94 are correct.

B. That the petition of Quirino Iaboni d/b/a Goody's Deli is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 6, 1977 is sustained.

DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION

James H. Tully
PRESIDENT

Thomas H. Lyn. L.
COMMISSIONER

Francis R. Koenig
COMMISSIONER