

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Donn M. Ianuzi :  
d/b/a Talent House Advertising 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 :  
12/1/74-2/28/79. :

State of New York  
County of Albany

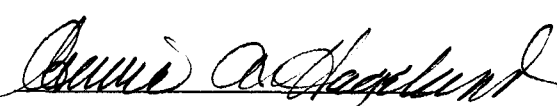
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Donn M. Ianuzi, d/b/a Talent House Advertising Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

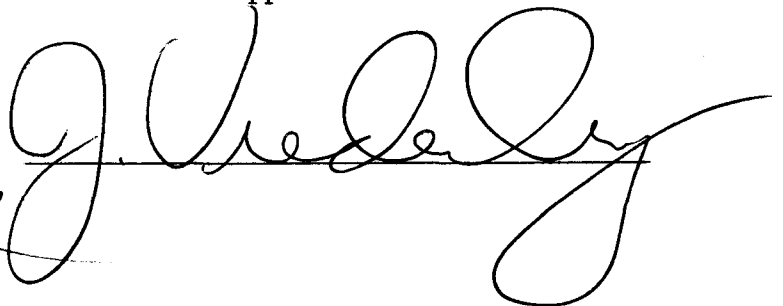
Donn M. Ianuzi  
d/b/a Talent House Advertising Co.  
4809 Marshall Dr. E.  
Binghamton, NY 13903

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  
3rd day of December, 1982.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 3, 1982

Donn M. Ianuzi  
d/b/a Talent House Advertising Co.  
4809 Marshall Dr. E.  
Binghamton, NY 13903

Dear Mr. Ianuzi:

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) 1139 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

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 :  
DONN M. IANUZI : DECISION  
d/b/a TALENT HOUSE ADVERTISING 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 December 1, 1974 :  
through February 28, 1978. :

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Petitioner, Donn M. Ianuzi d/b/a Talent House Advertising Co., 4809 Marshall Drive E., Binghamton, New York 13903, 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, 1974 through February 28, 1978 (File No. 24334).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, State Office Building Annex, 164 Hawley Street, Binghamton, New York, on December 3, 1981, at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether the results of a field audit performed by the Audit Division properly reflected petitioner's additional sales and use tax liability.

FINDINGS OF FACT

1. On July 10, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Donald Ianuzi d/b/a Talent House Advertising Co. covering the period December 1, 1974 through February 28, 1978. The Notice asserted additional tax due of \$5,270.09, plus

penalty and interest of \$1,884.97, for a total of \$7,155.06 as the result of a field audit.

2. Petitioner was engaged in providing advertising services which are exempt from sales tax. Petitioner also sold tangible personal property subject to tax such as advertising brochures and provided the taxable service of addressing and stuffing envelopes.

3. On audit, the Audit Division reviewed sales made by petitioner for the entire audit period. It determined that additional taxable sales were made in the amount of \$68,256.42 on which no sales tax was charged or remitted on sales and use tax returns filed. The Audit Division determined additional sales tax due thereon of \$4,512.32.

The Audit Division also reviewed purchases of supplies, materials and services made by petitioner for the entire audit period. It determined that petitioner made taxable purchases of \$10,825.54 on which no sales tax had been paid. The Audit Division determined use tax due of \$757.77 on such purchases. The Audit Division thereby determined a total sales and use tax liability of \$5,270.09 for the audit period.

4. Petitioner contended that some of the sales deemed subject to additional sales tax were in error in that the amount invoiced was not paid or that some of the sales made were sales for resale. Petitioner offered no evidence of credits being issued or of bad debts to support his contentions. No resale certificates were submitted to evidence that any of the additional sales found in the audit period were sales for resale.

5. Petitioner did submit correspondence from two of his customers whose purchases from petitioner were held subject to sales tax on audit. These customers had been audited by the Audit Division and any taxes not paid by them

on their taxable purchases were held subject to tax on their respective audits.

These customers were as follows:

Greek Peak Ski Resort - all purchases held subject to tax on audit with the exception of Invoice No. 2310B from petitioner in the amount of \$275.00

Florance Electric Supply Co., Inc. - all purchases held subject to tax on audit through February, 1977.

6. Petitioner contended that some of the purchases deemed subject to use tax on audit were resold to his customers. Petitioner offered no evidence that these items such as photographs or prints were resold as such as opposed to having been consumed by him in the performance of his tax exempt advertising services.

7. In further support of his petition, petitioner submitted a letter dated December 2, 1980 received from the Sales Tax Instructions and Interpretations Unit of the Department of Taxation and Finance regarding the tax status of negatives purchased for use in printing brochures. Petitioner also submitted a copy of TSB-M-79(7.1)S, a New York State Department of Taxation and Finance, Taxpayer Services Division, Technical Services Bureau publication dated May 15, 1980, concerning the printing industry. Petitioner offered no evidence as to which negatives, prints or color separations held subject to tax on audit were used in the production of brochures for sale versus those used in the performance of an exempt advertising service.

8. Petitioner argued that penalty and interest were not due in that he followed all instructions given upon his registration for his authorization to collect sales tax.

#### CONCLUSIONS OF LAW

A. That the field audit performed by the Audit Division did not consider the fact that a portion of the taxable sales made by petitioner were taxed on

audits made of petitioner's customers. That the audit results pertaining to additional taxable sales are reduced pursuant to Finding of Fact "5" at p. 3.

B. That pursuant to 20 NYCRR 601.8(g) and section 306.1 of the State Administrative Procedure Act, the burden of proof is upon the petitioner. Except as noted in Conclusion of Law "A" above, petitioner failed to show through documentary evidence or otherwise that the Audit Division erred in its determination of additional sales and use taxes due.

C. That except as noted in Conclusion "A" above, the audit performed by the Audit Division was proper and in accordance with the provisions of section 1138(a) of the Tax Law.


D. That petitioner acted in good faith without the intent to evade any tax due. That pursuant to the authority granted under 1145(a)(1) of the Tax Law, penalty and interest in excess of the minimum statutory rate are cancelled.


E. That the petition of Donald Ianuzi d/b/a Talent House Advertising Co. is granted to the extent indicated in Conclusions of Law "A" and "D" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 10, 1978 with minimum statutory interest thereon; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER