

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Louis Lodoti	:	
d/b/a Lowery Liquor & Wine 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 9/1/71 - 11/30/75.	:	

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 July, 1982, he served the within notice of Decision by certified mail upon Louis Lodoti, d/b/a Lowery Liquor & Wine Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis Lodoti
d/b/a Lowery Liquor & Wine Co.
40-14 Queens Blvd.
Long Island City, NY 11104

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 July, 1982.

Annice P. Chapman

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louis Lodoti :
d/b/a Lowery Liquor & Wine 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 9/1/71 - 11/30/75. :

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 July, 1982, he served the within notice of Decision by certified mail upon Bernard J. Klinger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

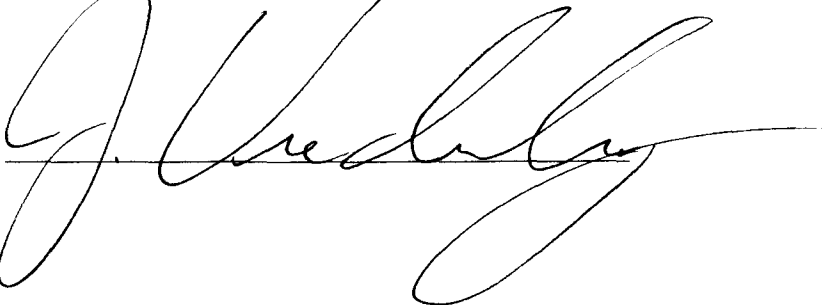
Bernard J. Klinger
c/o B. J. Klinger, CPA
17 Battery Pl.
New York, NY 10004

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 July, 1982.


Laurie A. Hagelund


Jay Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louis Lodoti :
d/b/a Lowery Liquor & Wine 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 9/1/71 - 11/30/75. :

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 July, 1982, he served the within notice of Decision by certified mail upon Charles J. Carreras the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles J. Carreras
233 Broadway
New York, NY 10004

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 July, 1982.

Annice R. Haglund

J. Vredenburg

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

July 16, 1982

Louis Lodoti
d/b/a Lowery Liquor & Wine Co.
40-14 Queens Blvd.
Long Island City, NY 11104

Dear Mr. Lodoti:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Bernard J. Klinger
c/o B. J. Klinger, CPA
17 Battery Pl.
New York, NY 10004
and
Charles J. Carreras
233 Broadway
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LOUIS LODATI	:	DECISION
d/b/a LOWERY LIQUOR & WINE 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 September 1, 1971	:	
through November 30, 1975.	:	

Petitioner, Louis Lodati d/b/a Lowery Liquor & Wine Co., 40-14 Queens Boulevard, Long Island City, New York 11104, 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 September 1, 1971 through November 30, 1975 (File No. 17336).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1979 at 1:15 P.M. and was continued before Julius E. Braun, Hearing Officer, on October 9, 1980 at 9:15 A.M. and January 6, 1981 at 10:00 A.M. and concluded on March 25, 1981 at 9:30 A.M. Petitioner appeared by Charles Carreras, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., Frank Levitt, Esq., and Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner is liable for penalty and interest upon an assessment of sales and use taxes for the period September 1, 1971 through November 30, 1975.

FINDINGS OF FACT

1. Petitioner executed a Consent Extending the Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law, which extended the time for determination of taxes due for the period June 1, 1972 through February 28, 1975 to June 20, 1977.

2. On September 27, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner after audit for the period June 1, 1972 through November 30, 1975 in the amount of \$80,177.53 plus penalty and interest in the amount of \$38,163.48 for a total of \$118,344.01.

3. On September 6, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner after audit for the period September 1, 1971 through May 31, 1972 in the amount of \$14,011.56 plus penalty and interest of \$9,749.72 for a total of \$23,761.28.

4. Louis Lodoati was charged with three counts of violating section 1145(b) of the Tax Law, i.e., wilfully filing sales tax returns which petitioner knew to be false, covering the periods June 1, 1974 through August 31, 1974, September 1, 1974 through November 30, 1974 and December 1, 1974 through February 28, 1975. On August 19, 1976, he pled guilty in the Criminal Court of the City of New York and received a conditional discharge. The discharge was conditioned upon full restitution of the audit amount of a twelve month period based upon a final determination.

5. Petitioner, who was 73 years of age, a sole proprietor, ran the business. His accountant prepared the returns from register tapes given to him. The Audit Division recommended that petitioner be charged with a deliberate attempt to evade proper payment of sales taxes. There was a great disparity between gross cash receipts per books and gross sales per sales tax returns. Petitioner had knowledge of his non-taxable sales, sales taxes collected and total cash receipts.

6. The Audit Division at the hearing conceded that the notice issued on September 6, 1977 in the amount of \$23,761.28 should be cancelled because of the Statute of Limitations and that the Consent signed by petitioner did not cover certain periods involved (September 1, 1971 through May 31, 1972). The Audit Division also conceded that for the periods June 1, 1972 through November 30, 1975, petitioner was not given a credit for exempt sales. In view of proper documentation presented by petitioner, credits should be allowed for the period ending May 31, 1974 in the amount of \$6,493.68, for the period ending May 31, 1975 in the amount of \$1,685.68 and for the period ending August 31, 1975 in the amount of \$2,477.32. A total tax of \$10,647.08 of the original assessment therefore, should be allowed; this decreases the tax assessed of \$80,177.53 to \$69,530.45. Petitioner acknowledged that with the revised credit the assessment was correct.

CONCLUSIONS OF LAW

A. That under appropriate circumstances the Tax Commission may remit all or any part of penalty. There is no authority either judicial or statutory requiring such a reduction. Matter of C.H. Heist Corp. v. State Tax Commission, 50 N.Y.2d 438, modfg., 66 A.D.2d 499, 503.

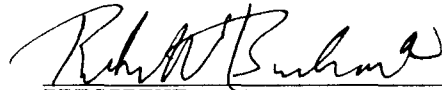
B. That the reduction of penalty and interest is unwarranted in view of Findings of Fact "4" and "5". That reasonable cause does not exist in view of the pleading therein. A man of experience in business who pled guilty to willfully filing sales tax returns knowing them to be false does not deserve such other consideration.

C. That the petition of Louis Lodati d/b/a Lowery Liquor & Wine Co. is granted to the extent as set forth in Finding of Fact "6"; thus the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 27, 1976 is to be modified accordingly plus penalty and interest; and that except as so modified, the determination is sustained.

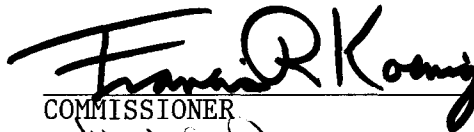
DATED: Albany, New York

JUL 16 1982

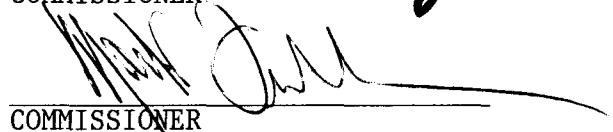
STATE TAX COMMISSION



ACTING PRESIDENT



COMMISSIONER



COMMISSIONER