

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

December 29, 1982

Diego Petruzzella
75 Traymore Ave.
Buffalo, NY 14216

Dear Mr. Petruzzella:

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 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
Ernest J. Gawinski
615 Brisbane Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DIEGO PETRUZZELLA	:	DECISION
	:	
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, 1973	:	
through June 30, 1976.	:	

Petitioner, Diego Petruzzella, 75 Traymore Avenue, Buffalo, New York 14216, 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, 1973 through June 30, 1976 (File No. 18914).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on May 13, 1982, at 9:15 A.M. Petitioner appeared by Ernest J. Gawinski, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner, the purchaser in a bulk sale transaction, is liable for the taxes determined to be due from the seller in accordance with section 1141(c) of the Tax Law.

II. Whether the penalty and interest in excess of the minimum statutory rate should be cancelled.

FINDINGS OF FACT

1. Pursuant to an agreement executed August 23, 1976, petitioner, Diego Petruzzella, purchased a grocery store business from James A. Chevillot.

Petitioner did not notify the Audit Division of the proposed sale. The total sales price was \$8,327.62 which comprised the following: \$1,500.00 - goodwill, furniture, fixtures, equipment, \$6,487.10 - stock and \$340.52 - miscellaneous supplies.

2. An audit of the seller's books and records disclosed additional sales taxes due of \$4,066.71 for the period June 1, 1973 through June 30, 1976. On March 18, 1977, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner for the amount of said taxes, plus penalty and interest of \$1,956.34, for a total of \$6,023.05. Petitioner was held liable for the taxes determined due from the seller in accordance with section 1141(c) of the Tax Law.

3. Petitioner stated that the business closed December 31, 1980 and that he is presently unemployed and is receiving disability benefits because of a heart ailment. Petitioner went on to state that on the other hand, James Chevillot is gainfully employed and that for such reason, and the fact that the tax liability was incurred by the seller, the Audit Division should seek collection from Mr. Chevillot.

4. The additional taxes found due on audit were caused by the seller. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That petitioner failed to comply with the provisions of section 1141(c) of the Tax Law and that for such failure is personally liable for taxes determined due from James Chevillot as provided in said section of the Tax Law.

B. That the penalty is cancelled and interest shall be computed at the minimum statutory rate.

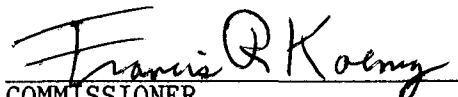
C. That the petition of Diego Petruzzella is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice and Demand for Payment of Sales and Use Taxes Due issued March 18, 1977; and that, except as so granted, the petition is in all other respects denied.

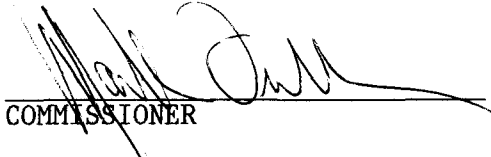
DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION

ACTIVE 
PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Diego Petruzzella	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period 6/1/73 - 6/30/76.	:	

State of New York
County of Albany

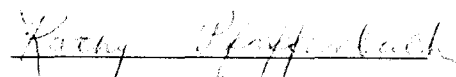
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon Diego Petruzzella, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

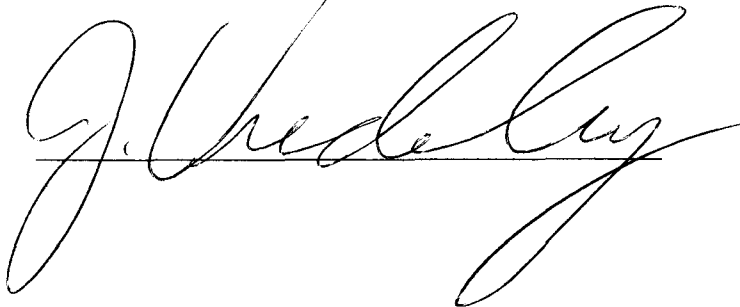
Diego Petruzzella
75 Traymore Ave.
Buffalo, NY 14216

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
29th day of December, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE TAX COMMISSION


State of New York
County of Albany

Ernest J. Gawinski
615 Brisbane Bldg.
Buffalo, NY 14203

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.

Ray M. Papp
 AUTHORIZED TO ADMINISTER
 OATHS PURSUANT TO TAX LAW
 SECTION 174

ative of the petitioner.



P 230 844 349
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL
(See Reverse)

PS Form 3800, Apr. 1976

SENT TO		Ernest J. Gawinski	
STREET AND NO.		615 Brisbane Bldg	
P.O. STATE AND ZIP CODE		Buffalo N.Y. 14203	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	c
		SPECIAL DELIVERY	c
		RESTRICTED DELIVERY	c
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	c
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	c
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	c
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	c
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

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		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	c
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	c
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	c
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			