

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

January 28, 1983

Mario Iacampo  
d/b/a Mario's Restaurant  
3600 Court St.  
Syracuse, NY 13206

Dear Mr. Iacampo:

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  
Anthony J. Fazio  
300 Erie Blvd. W., Office A-3  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Mario Iacampo  
d/b/a Mario'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:  
Ended 8/31/78-7/5/79.

State of New York  
County of Albany

David Parchuck, 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 28th day of January, 1983, he served the within notice of Decision by certified mail upon Mario Iacampo, d/b/a Mario's Restaurant the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mario Iacampo  
d/b/a Mario's Restaurant  
3600 Court St.  
Syracuse, NY 13206

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  
28th day of January, 1983.

David Parchuck

Carrie A. Fitzgerald

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Mario Iacampo :  
d/b/a Mario'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 Ended 8/31/78-7/5/79.

State of New York  
County of Albany

David Parchuck, 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 28th day of January, 1983, he served the within notice of Decision by certified mail upon Anthony J. Fazio the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony J. Fazio  
300 Erie Blvd. W., Office A-3  
Syracuse, NY 13202

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  
28th day of January, 1983.

David Parchuck

Conni A. Hargrave  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MARIO IACAMPO	:	DECISION
d/b/a MARIO'S RESTAURANT	:	
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, 1978	:	
through July 5, 1979.	:	

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Petitioner, Mario Iacampo, d/b/a Mario's Restaurant, 3600 Court Street, Syracuse, New York 13206, 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, 1978 through July 5, 1979 (File No. 29497).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on March 25, 1982 at 10:45 A.M. Petitioner appeared by Anthony J. Fazio, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq., (Alexander Weiss, Esq., of counsel).

ISSUES

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

II. Whether the Audit Division properly estimated the taxes due from the seller.

FINDINGS OF FACT

1. On July 23, 1979, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk from petitioner, Mario Iacampo d/b/a Mario's

Restaurant regarding his purchase of a restaurant business from Arthur J. Ferrara. Said notification indicated July 5, 1979 as the scheduled date of sale and listed the total sales price of the business as \$17,500.00. The sales price of the furniture and fixtures was \$11,500.00 and a bulk sales tax of \$805.00 was paid thereon.

The transfer of the business actually took place on August 1, 1979.

2. On July 30, 1979, the Audit Division notified petitioner of a possible claim for New York State and local sales and use taxes from the seller. The notification stated that no distribution of funds or property to the extent of the amount of the State's claim may be made before the following conditions have been met:

1. The State Tax Commission has determined the seller's liability, if any.
2. Payment of such liability has been made to the State.
3. This office has authorized you to release the funds or property.

3. The Audit Division gave notice to petitioner of the amount of the State's claim on October 1, 1979 by issuing a Notice of Determination and Demand for Payment of Sales and Use Taxes Due covering the period June 1, 1978 through July 5, 1979 for taxes due of \$5,400.00, plus penalty and interest of \$961.47, for a total of \$6,361.47. Petitioner was held liable for the taxes, penalty and interest determined due from Arthur J. Ferrara pursuant to section 1141(c) of the Tax Law. Mr. Ferrara did not file sales tax returns for the periods covered by the notice.

4. The seller, Mr. Ferrara, advised petitioner on July 3, 1979 that his total indebtedness to New York State was \$2,279.09. Said amount represented taxes due on a Notice of Determination and Demand for Payment of Sales and Use

Taxes Due issued for the period ended November 30, 1978. Petitioner paid this notice prior to the sale and a liability for this period was not included on the notice issued October 1, 1979.

5. Petitioner argued that the Audit Division received timely notification of the bulk sale and that he was not advised of the State's claim against Mr. Ferrara prior to the transfer. Petitioner further argued that the taxes asserted against Mr. Ferrara were estimates with no basis in fact.

6. The Audit Division failed to establish the external indices it used to estimate the amount of taxes due from Mr. Ferrara.

Petitioner offered no evidence to show that the amount estimated by the Audit Division was incorrect.

7. Petitioner filed a sales tax return showing sales of \$4,879.00 for the month of August, 1979.

8. Petitioner acted in good faith at all times and did not willfully attempt to evade the taxes at issue.

#### CONCLUSIONS OF LAW

A. That the State Tax Commission, upon receipt of the notice of bulk sale from petitioner, notified petitioner not to distribute funds or property until it determined if the seller is liable for sales taxes and the extent of such liability; that the Tax Commission notified petitioner of the amount of taxes due from the seller within ninety days of receipt of petitioner's notice of sale as required by section 1141(c) of the Tax Law.

That petitioner transferred funds prior to being notified of the amount of the State's claim for taxes due from the seller and therefore, is personally liable for the payment of such taxes in accordance with the provisions of section 1141(c) of the Tax Law.

B. That the seller, Arthur J. Ferrara, failed to file sales tax returns for the periods at issue; therefore, the Audit Division estimated the tax due as authorized in section 1138(a) of the Tax Law. The Audit Division did not use external indices to estimate the taxes due as required by said section of the Tax Law; however, based on one month's sales reported by petitioner, the amount estimated by the Audit Division is reasonable.

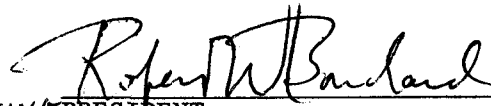
C. That the penalty is cancelled and interest is reduced to the minimum statutory rate.

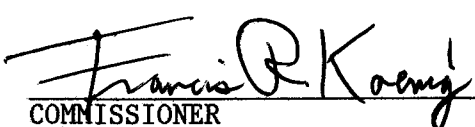
D. That the petition of Mario Iacampo d/b/a Mario's Restaurant is granted to the extent indicated in Conclusion of Law "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 1, 1979; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 28 1983

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

**P 278 401 723**  
**RECEIPT FOR CERTIFIED MAIL**

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

SENT TO		<i>Maria Lacampo</i>	
STREET AND NO.		<i>414 Maria Restaurant</i>	
P.O., STATE AND ZIP CODE		<i>34400 Court St</i>	
POSTAGE		<i>Signature 7/4/1976</i>	
CERTIFIED FEE			
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

PS Form 3800, Apr. 1976

**P 278 401 724**  
**RECEIPT FOR CERTIFIED MAIL**

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

SENT TO		<i>Catherine J. Fazio</i>	
STREET AND NO.		<i>300 E. Blvd. W. Office A-3</i>	
P.O., STATE AND ZIP CODE		<i>Signature 7/4/1976</i>	
POSTAGE			
CERTIFIED FEE		¢	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

PS Form 3800, Apr. 1976