

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

December 14, 1984

San Francisco Plum Corp.
and John Farro
c/o Miller, Hershy & Co.
500 Fifth Ave.
New York, NY 10036

Gentlemen:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Alan Greer AND
Miller, Hershy & Co.
500 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

Alan Greer, Esq.
419 Park Avenue South
Room 506
New York, NY 10016

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SAN FRANCISCO PLUM CORP.	:	DECISION
and JOHN FARRO	:	
	:	
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, 1976	:	
through November 30, 1980.	:	

Petitioners, San Francisco Plum Corp. and John Farro, c/o Miller, Hershy & Co., 500 Fifth Avenue, New York, New York 10036, 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, 1976 through November 30, 1980 (File No. 35950).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 27, 1983 at 9:00 A.M., with final briefs submitted on April 11, 1984. Petitioners appeared by Alan Greer, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether all payments on account of sales and use taxes made by petitioners were credited against assessments made for the period at issue.

FINDINGS OF FACT

1. Petitioner San Francisco Plum Corp. acquired the business of Eddie's 1890 Pub, Inc. in or about October, 1975. Petitioner John Farro was president of San Francisco Plum Corp. during the period at issue.

2. As the result of a field audit, on October 2, 1981 the Audit Division issued the following notices of determination and demand for payment of sales and use taxes due:

San Francisco Plum Corp.

<u>Notice #</u>	<u>Tax Due</u>	<u>Period</u>
S811002103C	\$47,679.31	6/1/76-11/30/79
S811002104C	308.13	12/1/79-11/30/80

John Farro, Officer

<u>Notice #</u>	<u>Tax Due</u>	<u>Period</u>
S811002105C	\$46,595.40	6/1/76-11/30/79
S811002106C	235.73	12/1/79-11/30/80

(The differences between the amounts assessed against the corporation and the amounts assessed against Mr. Farro are due to the fact that Mr. Farro was not assessed for use tax.)

3. Petitioners did not contest the audit findings or the assessments, but only the amounts credited against the assessments. They specifically contended that the following checks were not credited by the Tax Compliance Bureau:

<u>Date of Check</u>	<u>Period Ending</u>	<u>Amount of Check</u>
9/16/76	8/31/76	\$3,448.32
12/20/76	11/30/76	3,547.28
3/17/77	2/28/77	4,028.28
3/22/81	11/30/79	7,486.40

Petitioners introduced copies of cancelled checks showing that said amounts were paid.

4. The hearing officer directed the Audit Division to contact the New York City Tax Compliance Unit and determine exactly how much of the assessments remained unpaid. In a memorandum dated March 29, 1984, the Audit Division reported as follows:

<u>Period Ending</u>	<u>Tax Assessed</u>	<u>Tax Paid</u>
8/76	\$3,333.46	\$3,448.32
11/76	3,547.27	3,547.27
2/77	4,028.28	4,028.28
8/78	5,458.76	5,608.46
11/78	2,348.22	2,348.22
2/79	5,237.11	5,237.11
5/79	6,261.36	3,040.91*
8/79	7,057.58	Not Paid
11/79	7,486.39	7,486.40

* Partial Payment

The revised tax remaining due on the assessments (as of March 29, 1984) is as follows:

San Francisco Plum Corp.

<u>Notice #</u>	<u>Tax Due</u>	<u>Period</u>
S811002103C	\$12,934.36	6/1/76-11/30/79
S811002104C	308.13	12/1/79-11/30/80

John Farro, Officer

<u>Notice #</u>	<u>Tax Due</u>	<u>Period</u>
S811002105C	\$11,850.42	6/1/76-11/30/79
S811002106C	235.73	12/1/79-11/30/80

Total revised tax due for San Francisco Plum Corp. is \$13,242.49. Total revised tax due for John Farro, officer, is \$12,086.15.

CONCLUSIONS OF LAW

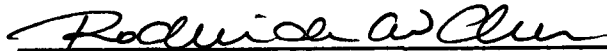
A. That based on the Audit Division memorandum dated March 29, 1984, the assessments are revised in accordance with Finding of Fact "4". The total revised tax due for San Francisco Plum Corp. is \$13,242.49, while the portion of said sum due for petitioner John Farro as a person required to collect tax on behalf of said corporation (section 1131(1) and section 1133(a) of the Tax Law) is limited to \$12,086.15. Penalties and interest are to be recalculated based upon the revised assessments.

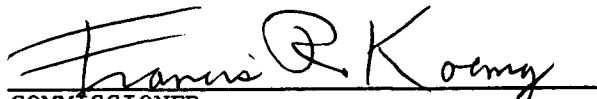
B. That the petition of San Francisco Plum Corp. and John Farro is granted to the extent indicated in Conclusion of Law "A" above, and is in all other respects denied.

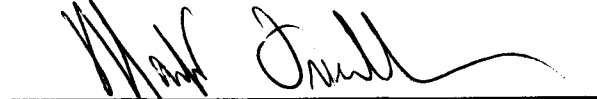
DATED: Albany, New York

STATE TAX COMMISSION

DEC 14 1984


PRESIDENT


COMMISSIONER


COMMISSIONER