

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

June 15, 1984

Santaro-Tarosan, Inc.
Att: Robert Siracusa
471 E. Manlius St.
E. Syracuse, NY 13057

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
Donald A. Lux
1909 Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Santaro-Tarosan, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/75-5/31/78. :

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of June, 1984, he served the within notice of Decision by certified mail upon Santaro-Tarosan, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

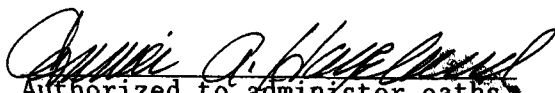
Santaro-Tarosan, Inc.
Att: Robert Siracusa
471 E. Manlius St.
E. Syracuse, NY 13057

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
15th day of June, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Santaro-Taroson, Inc.	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision	:	
of a Determination or Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period 6/1/75-5/31/78.	:	

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of June, 1984, he served the within notice of Decision by certified mail upon Donald A. Lux, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald A. Lux
1909 Mony Plaza
Syracuse, NY 13202

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
15th day of June, 1984.

David Parsbuck

James P. Hammond
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SANTARO-TAROSON, INC.	:	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, 1975	:	
through May 31, 1978.	:	

Petitioner, Santaro-Tarosan, Inc., 471 East Manlius Street, East Syracuse, New York 13507, 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, 1975 through May 31, 1978 (File No. 28203).

A formal 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 10, 1983 at 1:15 P.M. and was continued to conclusion on August 30, 1983 at 9:30 A.M., with all briefs to be submitted by September 15, 1983. Petitioner appeared by Donald A. Lux, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUES

I. Whether petitioner's purchases of materials for use in performing a construction contract with J.A. Jones Construction Company as agent for Joseph Schlitz Brewing Co. were subject to sales and use taxes.

II. Whether petitioner is liable for tax on the acquisition and sale of certain fixed assets.

III. Whether petitioner is entitled to a credit for use taxes paid on its sales tax return filed for the period ending February 28, 1978.

FINDINGS OF FACT

1. Petitioner, Santaro-Tarosan, Inc., was a general contractor engaged primarily in road construction.

2. On September 20, 1979, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period June 1, 1975 through May 31, 1978 for taxes due of \$253,633.64, plus interest of \$51,021.93, for a total of \$304,655.57.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period June 1, 1975 through May 31, 1976, to September 20, 1979.

4. On audit, the Audit Division examined available sales invoices for sales of other than capital improvements and determined unsubstantiated non-taxable sales of \$1,447,909.00 with tax due thereon of \$100,972.33.

Purchases of materials and expense items were reviewed for the entire audit period. All such purchases on which no sales or use tax was paid were listed by contract or expense account number. Contracts were analyzed to ascertain if any were tax exempt. The taxable purchases amounted to \$1,374,408.90 with use taxes due of \$92,475.17. Depreciation schedules filed with 1975, 1976 and 1977 income tax returns were examined to determine the acquisition and disposal of fixed assets resulting in a sales and use tax deficiency of \$60,186.14.

5. The books and records were incomplete for audit purposes in that the following records were unavailable: general ledger and journals for the entire audit period, certain contracts, exemption certificates, and purchase and sales invoices for fixed assets.

6. Following a pre-hearing conference, the additional sales and use taxes found due on audit were revised as follows:

a) disallowed nontaxable sales	\$11,432.35
b) fixed asset purchases and sales	581.00
c) materials used in capital improvements	41,582.15
d) expense purchases	28,784.68
TOTAL	<u>\$82,380.18</u>

Petitioner disagreed with the following areas of the revised liability:

	<u>Amount of Purchases</u>	<u>Tax Due</u>
a) Purchases from Syracuse Supply Co., Inc.	\$ 33,962.63	\$ 1,497.39
b) purchases from F & O Asphalt Co.	462,863.51	29,624.98
c) purchases subject to use tax reported on sales tax return filed for the period ended February 28, 1978	202,230.00	14,156.10
d) fixed assets	8,300.00	581.00

7. At the hearing, petitioner presented testimony and documentary evidence regarding the purchases in "6(a)" and "6(b)" above. After reviewing such evidence counsel for the Audit Division conceded that petitioner paid all applicable sales taxes to Syracuse Supply Co., Inc. and that four percent sales tax was collected by F & O Asphalt on material purchases. This results in a further revision of \$24,714.64.

8. The purchases from F & O Asphalt Co. included material purchases of \$157,172.96 (including 4% sales tax) which were incorporated into real property in the performance of a contract with J.A. Jones Construction Company as agent for Joseph Schlitz Brewing Co. Except for such materials, petitioner agreed that three percent local tax is due on the purchases from F & O Asphalt Co. that were held subject to the seven percent tax rate in Onondaga County.

F & O Asphalt Co. collected four percent sales tax (\$6,045.12) on the materials sold to petitioner for the Schlitz contract.

9. On March 31, 1975, the Onondaga County Industrial Development Agency (IDA) and Joseph Schlitz Brewing Company (Schlitz) had entered into an agreement whereby the IDA agreed to finance the acquisition, construction and equipping of a waste treatment plant together with equipment and facilities associated therewith. IDA appointed Schlitz its agent for purposes of acquiring, constructing and equipping the facility, entering into contracts and doing all things requisite for completing the facility. The agreement further provided that IDA sell the facility to Schlitz on a deferred payment basis.

On July 13, 1976, in connection with the above contract, J.A. Jones Construction Company, as agent for Joseph Schlitz Brewing Company (Schlitz), executed a contract with petitioner whereby petitioner was to furnish all labor, materials (except for materials furnished by owner), equipment, supervision and services necessary to complete the work identified as "Site Underground Services (Phase II) Bituminous Pavement Rework of Site Drainage". The contract price was \$468,535.00.

10. IDA is exempt from the imposition of sales and use taxes under section 1116(a)(1) of the Tax Law. IDA issued an exemption certificate "to whom it may concern" which certified that purchases by IDA through its agent, Schlitz, of materials to be incorporated into the waste treatment facility and purchases or rentals of supplies, tools, equipment or services necessary to construct, renovate or equip such facility, are totally exempt from sales and use taxes.

11. The parties to the July 13, 1976 contract, petitioner and J.A. Jones Construction Company, intended to exclude sales taxes on purchases of material to be used in the performance of the contract. The exclusion of sales tax was for the benefit of the exempt organization.

12. The fixed assets in dispute involve the following transactions:

- (a) (2) 1971 Chevrolet vans purchased from Allied Pneumatic Tool Co. for \$3,400.00. No sales tax was charged by the vendor,
- (b) sale of 1971 Chevrolet to an employee for \$100.00,
- (c) sale of junk automobiles to an auto part dealer for \$1,300.00,
- (d) lube truck carried on depreciation schedule for book value of \$3,500.00.

Petitioner argued that with respect to (a) and (b), sales tax was paid at the time the vehicles were registered with the Department of Motor Vehicles. However, petitioner offered no substantiation of payment.

Petitioner argued the sale of the junk automobiles (c) was for the resale of parts. Petitioner did not offer any resale certificate from the purchaser.

Petitioner argued that the lube truck (d) was not a new acquisition but rather an old truck body (originally acquired in 1969) reactivated for the purpose of becoming part of a new truck with a total conversion cost of \$11,500.00.

13. Petitioner reported purchases subject to use tax of \$202,230.00 on the sales tax return filed for the period ending February 28, 1978 and paid the use tax thereon of \$14,156.10. Petitioner did not report taxable purchases in any other period. The auditor attempted to verify the purchases reported, however, petitioner was unable to provide any documentation or explanation as to what the payment represented.

Petitioner speculated that the use tax payment represented use taxes due for prior years because it was reported in the period directly after some of its personnel attended a sales tax seminar. In addition, petitioner argued that the Audit Division examined its purchase invoices in detail for the audit

period and it is inconceivable that there were additional unreported purchases of \$200,000.00. Therefore, petitioner concluded that the payment was erroneous and it is entitled to a credit of same.

CONCLUSIONS OF LAW

A. That section 1115(a)(15) of the Tax Law provides an exemption from sales and use taxes for "tangible personal property sold to a contractor, subcontractor... for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen...".

B. That the materials purchased by petitioner from F & O Asphalt Co. (Finding of fact "8") were incorporated into real property owned by the IDA, a tax exempt organization. Accordingly, such materials are exempt from the imposition of sales and use taxes under section 1115(a)(15) of the Tax Law. The additional taxes assessed on audit of \$11,002.11 are therefore cancelled (\$6,286.92 is reflected in Finding of Fact "6"). Moreover, petitioner is to be credited with the sales taxes paid on the materials at the time of purchase amounting to \$6,045.12 (Finding of Fact "8").

C. That petitioner failed to sustain the burden of proof required by section 1132(c) of the Tax Law with respect to the fixed assets set forth in Finding of Fact "12" and therefore, is liable for the taxes determined due thereon by the Audit Division.

Petitioner also failed to establish that the use tax payment referred to in Finding of Fact "13" was erroneous or that the payment reflected tax paid on any of the purchases held taxable on audit. Accordingly, petitioner is not entitled to a credit or refund.

D. That the petition of Santaro-Tarosan, Inc. is granted to the extent that the additional sales and use taxes determined due are reduced as follows:

revised at conference (Finding of Fact "6")		\$82,380.18
conceded at hearing (Finding of Fact "9")	\$24,714.64	
Conclusion of Law "B" (\$11,002.11 - 6,286.92)	4,715.19	
Conclusion of Law "B" (\$6,045.12 credit)	<u>6,045.12</u>	
Total Adjustment		<u>35,474.95</u>
TOTAL DUE		\$46,905.23

That, except as granted above, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 15 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 440 977 275

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Donald A. Lutz</i>	
Street and No. <i>1909 Mary Place</i>	
P.O., State and ZIP Code <i>Syracuse N.Y. 13202</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 440 977 274

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Spartan-Targem Inc.</i>	
Street and No. <i>477 E. Main St.</i>	
P.O., State and ZIP Code <i>Syracuse N.Y. 13202</i>	
Postage	\$ <i>1.3057</i>
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982