

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Antoniietta Randazzo : AFFIDAVIT OF MAILING
d/b/a Annette's Top Floor Fashions :

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law :
for the Period 3/1/80-11/30/82.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 11th day of March, 1986, he/she served the within notice of Decision by certified mail upon Antoniietta Randazzo, d/b/a Annette's Top Floor Fashions the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Antoniietta Randazzo
d/b/a Annette's Top Floor Fashions
7023 - 20th Avenue
Brooklyn, NY 11204

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
11th day of March, 1986.

David Parchuck

Daniel J. Parrell
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 11, 1986

Antonietta Randazzo
d/b/a Annette's Top Floor Fashions
7023 - 20th Avenue
Brooklyn, NY 11204

Dear Ms. Randazzo:

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ANTONIETTA RANDAZZO
D/B/A ANNETTE'S TOP FLOOR FASHIONS
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 March 1, 1980
through November 30, 1982.

DECISION

Petitioner, Antonietta Randazzo d/b/a Annette's Top Floor Fashions, 7023 20th Avenue, Brooklyn, New York 11204, 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 March 1, 1980 through November 30, 1982 (File No. 43336).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 9, 1985 at 1:15 P.M., with all briefs to be submitted by October 10, 1985. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division properly estimated the tax liability of petitioner for the period March 1, 1980 through November 30, 1982.

FINDINGS OF FACT

1. Petitioner, Antonietta Randazzo d/b/a Annette's Top Floor Fashions, sold women's clothing from her home located at 2070 74th Street, Brooklyn, New York. In April, 1982, petitioner opened a store known as "Body Talk Unisex". The store was closed and ceased operations on September 30, 1982.

2. Petitioner did not register with the Department of Taxation and Finance as a vendor for sales tax purposes until August 12, 1981.

3. On February 20, 1983, 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 March 1, 1980 through November 30, 1982 for taxes due of \$22,312.50, plus penalty and interest of \$8,297.52, for a total of \$30,610.02.

4. The Audit Division attempted to conduct an audit of petitioner's business; however, no books and records were provided. In the absence of books and records, it was necessary for the Audit Division to estimate petitioner's sales. Petitioner had been audited by the Internal Revenue Service for the year 1980. The audit disclosed, through a cash availability analysis, that petitioner had unreported net income of \$16,910.00. Petitioner consented to the federal adjustment. The Audit Division used the gross profit percentage of 18.038 percent shown on an amended federal income tax return filed by petitioner to determine sales of \$93,746.00. This amount was combined with sales of \$13,582.00 reported on sales tax returns filed for the periods ending May 31, 1980, August 31, 1980 and November 30, 1980 to arrive at total estimated sales of \$107,328.00 for 1980. Based on the foregoing audit procedures, the Audit Division estimated additional taxable sales of \$25,000.00 for each quarterly period under audit which resulted in taxes due of \$22,312.50.

5. At the hearing, petitioner offered documents purporting to be sales invoices and purchase invoices for certain months during the audit period and a ledger for the store operation showing entries for sales on a daily basis. These documents were incomplete and inadequate for audit purposes.

CONCLUSIONS OF LAW

A. That section 1135(a) of the Tax Law provides that every person required to collect tax shall keep records of every sale and all amounts paid, charged or due thereon and of the tax payable thereon. Such records shall include a true copy of each sales slip, invoice, receipt or statement. Petitioner failed to maintain books and records as required by section 1135(a) of the Tax Law. Accordingly, the Audit Division properly estimated the taxes due on the basis of external indices pursuant to section 1138(a) of the Tax Law.

B. That the estimate procedures adopted by the Audit Division were reasonable under the circumstances and petitioner failed to sustain its burden of showing that the method of audit or the amount of tax assessed was erroneous (Matter of Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 A.D.2d 858).

C. That the petition of Antonietta Randazzo d/b/a Annette's Top Floor Fashions is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 11 1984

Roderich W. Chu
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Judd
COMMISSIONER

P 319 373 563

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

Sent to *Antonietta Randazzo*
Annette's Top Floor
Street and No. *Fashion*
7023-204th Ave
P.O., State and ZIP Code
Brooklyn, NY 11204

* U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

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 Deliver.	
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