

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Gun Hill Plumbing Supply Co., Inc. :  
for Revision of a Determination or for Refund :  
of Sales and Use Tax under Articles 28 and 29 :  
of the Tax Law for the Period December 1, 1978 :  
through February 28, 1981. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :  
of :  
Gun Hill Plumbing Supply Co., Inc. :  
for Redetermination of a Deficiency or for :  
Refund of Corporation Franchise Tax under :  
Article 9-A of the Tax Law for the Years 1979 :  
and 1980. :

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, 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 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Gun Hill Plumbing Supply Co., Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

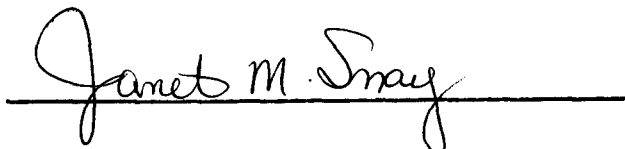
Gun Hill Plumbing Supply Co., Inc.  
3463 White Plains Rd.  
Bronx, NY 10467

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  
13th day of March, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Frank & Lydia Salzano :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income  
Tax under Article(s) 22 of the Tax Law for the :  
Years 1979 & 1980.  
:

State of New York :

ss.:

County of Albany :

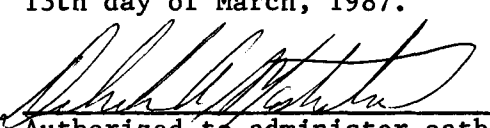
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Frank & Lydia Salzano the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

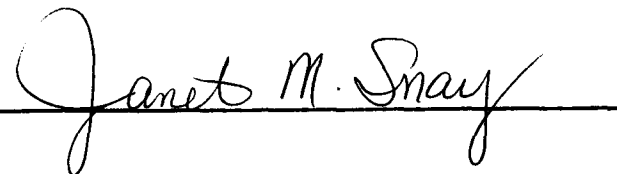
Frank & Lydia Salzano  
32 Hillcrest Rd.  
Mt. Vernon, NY 10552

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STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
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AFFIDAVIT OF MAILING

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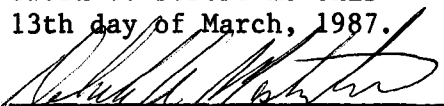
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 13th day of March, 1987, he served the within notice of Decision by certified mail upon Murray Appleman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

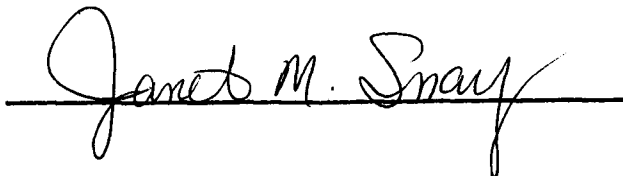
Murray Appleman  
225 Broadway  
New York, NY 10007

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  
13th day of March, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Frank & Lydia Salzano :

AFFIDAVIT OF MAILING

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Tax under Article(s) 22 of the Tax Law for the :  
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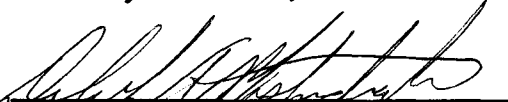
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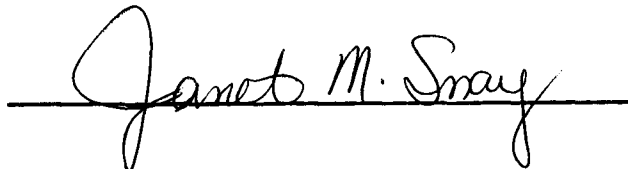
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Sworn to before me this  
13th day of March, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

March 13, 1987

Gun Hill Plumbing Supply Co., Inc.  
3463 White Plains Rd.  
Bronx, NY 10467

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 & 1090 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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Murray Appleman  
225 Broadway  
New York, NY 10007

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

March 13, 1987

Frank & Lydia Salzano  
32 Hillcrest Rd.  
Mt. Vernon, NY 10552

Dear Mr. & Mrs. Salzano:

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) 690 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:

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Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Murray Appleman  
225 Broadway  
New York, NY 10007

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
GUN HILL PLUMBING SUPPLY CO., INC. :  
for Revision of a Determination or for Refund :  
of Sales and Use Taxes under Articles 28 & 29 :  
of the Tax Law for the Period December 1, 1978 :  
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In the Matter of the Petition :  
of :  
GUN HILL PLUMBING SUPPLY CO., INC. :  
for Redetermination of a Deficiency or for :  
Refund of Corporation Franchise Tax under :  
Article 9-A of the Tax Law for the Years 1979 :  
and 1980. :

DECISION

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In the Matter of the Petition :  
of :  
FRANK SALZANO and LYDIA SALZANO :  
for Redetermination of a Deficiency or for :  
Refund of Personal Income Tax under Article 22 :  
of the Tax Law for the Years 1979 and 1980. :

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Petitioner, Gun Hill Plumbing Supply Co., Inc., 3463 White Plains Road, Bronx, New York 10467, 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 December 1, 1978 through February 28, 1981 and a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1979 and 1980 (File No. 41310).

Petitioners, Frank Salzano and Lydia Salzano, 32 Hillcrest Road, Mt. Vernon, New York 10552, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 41400).

A hearing was commenced before Sandra Heck, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 15, 1986 at 9:15 A.M. and continued to conclusion on June 10, 1986 at 10:00 A.M. Petitioners appeared by Murray Appleman, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

#### ISSUES

I. Whether petitioners Frank Salzano and Lydia Salzano are liable for additional personal income tax for the tax years 1979 and 1980.

II. Whether petitioner Gun Hill Plumbing Supply Co., Inc. is liable for additional sales tax based upon the cash availability audit method utilized in the personal income tax audit of Frank Salzano and Lydia Salzano.

III. Whether petitioner Gun Hill Plumbing Supply Co., Inc., timely filed a petition protesting the notice of deficiency of franchise tax pursuant to Article 9-A of the Tax Law.

#### FINDINGS OF FACT

1. On October 7, 1982, the Audit Division issued a Notice of Deficiency to petitioners Frank Salzano and Lydia Salzano asserting liability for additional personal income taxes for tax years 1979 and 1980 in the amount of \$9,981.71 plus penalty of \$499.09 and interest of \$2,204.10 for a total due of \$12,684.90.

2. The petitioners timely filed New York State income tax returns for the tax years 1979 and 1980, indicating on each said return that substantially all



of their income was derived from Frank Salzano's wages and distributions from his plumbing supply business, petitioner Gun Hill Plumbing Supply Co., Inc. ("the corporation").

3. Petitioners were subjected to a field audit by the Audit Division which implemented a cash availability audit method after an inspection of petitioners' books and records indicated more income than that reported on petitioners' income tax returns.

4. Upon examination by the auditor, it was determined from the New York personal income tax return that for the year 1979, petitioners' wages, exclusive of all taxes and social security withholding, were \$17,697.26.

5. Petitioners' total cash disbursements for 1979, including deposits to savings and checking accounts, itemized deductions, food and cash out-of-pocket, was calculated to be \$48,937.26, or \$31,240.00 in excess of net wages.

6. For the year 1980, petitioners' net wages were \$19,255.60.

7. Petitioners' cash disbursements for 1980, including the same items listed for 1979, with the exception of a deduction of \$600.00 for a check made out to cash used for living expenses, was calculated to be \$60,167.06, or \$40,911.46 in excess of net wages.

8. In chart form, the cash availability appears as follows:

	<u>1979</u>	<u>1980</u>
Cash In:		
Net Wages	\$17,697.26	\$19,255.60
Cash Out:		
Deposits to Savings	\$ 7,144.10	\$15,876.88
Deposits to Personal Checking	31,023.01	35,211.18

Itemized Deductions		
Medical	1,655.00	-0-
Paid thru checking	(614.50)	-0-
Contributions	385.00	329.00
Paid thru checking	(15.35)	(10.00)
Food \$30 per week x 5 people		
x 52 weeks	7,800.00	7,800.00
Cash out of pocket	1,560.00	1,560.00
	<u>48,937.26</u>	
Less checks made out to		
cash for living expenses		<u>(600.00)</u> <u>\$60,167.06</u>
Difference	\$31,240.00	\$40,911.46

9. All other living expenses not listed above were paid through personal checking and therefore were included in "cash out" as deposits to personal checking.

10. The Audit Division increased petitioners' taxable income for 1979 by \$31,240.00 and arrived at the tax on corrected taxable income of \$6,390.76.

11. Likewise, the Audit Division increased the taxable income for 1980 by \$40,911.46 and arrived at the tax on corrected taxable income of \$6,669.98.

12. Petitioners offered a closing statement and the testimony of Mr. Nicholas Napolitano, father of Lydia Salzano, as to the sale of his business in 1977, two years prior to the period in issue, wherein he gave his daughter \$3,158.00 in cash and assigned to her the proceeds of 40 promissory notes, each in the sum of \$300.00, plus seven percent interest.

13. Lydia Salzano testified that she used money from the notes for living expenses for herself, her spouse and three children, but she produced no cancelled checks, copies of checks or other proof of receipt.

14. Petitioners presented a letter from Mrs. J.C. Salzano, an aunt, dated June 28, 1982, which attested to the fact that her husband, petitioners' Uncle

Nicholas, gave each member of petitioners' family \$3,000.00 or a total amount of \$15,000.00, but without mention of the date of the gifts or any substantiating documentation of the gifts.

15. Petitioners also submitted a letter, dated June 28, 1982, addressed to their accountant, Mr. Zimmerman, in which Lydia Salzano stated that she saved over \$20,000 in her house during the years of her marriage which she used to pay living expenses in the years 1979 and 1980.

16. Lydia Salzano's letter and Frank Salzano's testimony alleged that Frank Salzano's father deposited funds into accounts for each of his children during the years 1979 and 1980, but the account bank book for Frank Salzano was not introduced.

17. Frank Salzano's father allegedly established an account for Frank Salzano at Manufacturers Hanover Trust Co., account number 034-5515961-01, but the title of the account and, therefore control, is in petitioner Frank Salzano in trust for his wife, Lydia Salzano.

18. Petitioner Lydia Salzano won approximately \$7,000.00 in cash at Yonkers raceway in 1977 which she allegedly kept at home and used for living expenses in 1979 and 1980.

19. Using the additional taxable income determined for personal income tax purposes, the Audit Division calculated additional taxable sales of the corporation for the period January 1, 1979 through December 31, 1980:

1978 - Additional taxable sales per income tax audit:	\$31,240.00
1980 - Additional taxable sales per income tax audit:	<u>40,911.00</u>
1979/1980 <u>TOTAL</u>	\$72,151.00
x Tax Rate of 8%	\$5,772.08

20. On October 5, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner Gun Hill

Plumbing Supply Co. Inc. ascertaining liability for additional sales and use taxes due for the period December 1, 1978 through February 28, 1981 in the amount of \$5,772.08 and interest of \$1,582.18 for a total due of \$7,354.26.

21. With the exception of sales tax returns filed by the corporation for the audit period, December 1, 1978 through February 28, 1981, the Audit Division did not examine any books or records of the corporation with respect to sales tax.

22. The Audit Division issued notices of deficiency for corporation franchise tax under Article 9-A of the Tax Law for the years 1979 and 1980 dated September 6, 1982 and provided proof of certified mailing validated by the United States Post Office on September 15, 1982.

23. Petitioners, through their representative, filed a petition in response to said notices of deficiency which was dated December 22, 1982 and received by the Tax Appeals Bureau on December 28, 1982.

#### CONCLUSIONS OF LAW

A. That the cash availability audit method was a valid means of reconstructing petitioners' income for the audit period, tax years 1979 and 1980.

(Matter of William Lasky and Ruth Lasky, State Tax Commission, July 18, 1984.)

B. That Tax Law § 689(e) places the burden of proof upon the petitioner in any case before the Tax Commission, except in three specifically enumerated instances, none of which is applicable herein.

C. That petitioners have not sustained their burden of proving that the cash availability audit method employed herein was either erroneous or improper.

D. That the Audit Division erred in assessing petitioner Gun Hill Plumbing Supply Co., Inc. for additional sales and use taxes based upon increased personal income tax of one officer of the corporation, without reviewing the

books and records of the corporation for their adequacy, and thereby estimated taxes without justification. (Tax Law § 1138[a]; Chartair, Inc. v. State Tax Commission, 65 AD2d 44.)

E. That petitioner, Gun Hill Plumbing Supply Co., Inc., did not timely file a petition within 90 days of issuance of the notices of deficiency for corporation franchise taxes due for the tax periods ending December 31, 1979 and December 31, 1980 and the application for a hearing is therefore denied (Tax Law § 1081[b]; § 1089[b])

F. That the petition of Frank Salzano and Lydia Salzano is denied and the Notice of Deficiency dated October 7, 1982 is hereby sustained together with applicable penalty and such additional interest as may be lawfully owing.

G. That the petition of Gun Hill Plumbing Supply Co., Inc. with regard to the assessment for additional corporation franchise tax is hereby denied, and the notices of deficiency dated September 6, 1982 are sustained together with such additional interest as may be lawfully owing.

H. That the petition of Gun Hill Plumbing Supply Co., Inc. with regard to the assessment for additional sales and use taxes is hereby granted in accordance with Conclusion of Law "D" and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 5, 1982 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA-26 (7/85)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
W. A. Harriman Campus  
ALBANY, N.Y. 12227

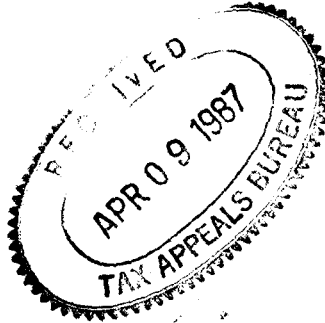
6-11-89

**CERTIFIED**

P 319 377 037

**MAIL**

Frank & Lydia Salzano  
32 Hillcrest Rd.  
Mt. Vernon, NY 10552



REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request  4/10/87
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec. 3/13/87
Name Frank & Lydia Salzano	
Address 32 Hillcrest Rd. Mt. Vernon, N.Y. 10552 107-306124	

## Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

March 13, 1987

Frank & Lydia Salzano  
32 Hillcrest Rd.  
Mt. Vernon, NY 10552

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Building #9, State Campus  
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Phone # (518) 457-2086

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STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Murray Appleman  
225 Broadway  
New York, NY 10007



STATE OF NEW YORK

STATE TAX COMMISSION

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DECISION

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#### ISSUES

I. Whether petitioners Frank Salzano and Lydia Salzano are liable for additional personal income tax for the tax years 1979 and 1980.

II. Whether petitioner Gun Hill Plumbing Supply Co., Inc. is liable for additional sales tax based upon the cash availability audit method utilized in the personal income tax audit of Frank Salzano and Lydia Salzano.

III. Whether petitioner Gun Hill Plumbing Supply Co., Inc., timely filed a petition protesting the notice of deficiency of franchise tax pursuant to Article 9-A of the Tax Law.

#### FINDINGS OF FACT

1. On October 7, 1982, the Audit Division issued a Notice of Deficiency to petitioners Frank Salzano and Lydia Salzano asserting liability for additional personal income taxes for tax years 1979 and 1980 in the amount of \$9,981.71 plus penalty of \$499.09 and interest of \$2,204.10 for a total due of \$12,684.90.

2. The petitioners timely filed New York State income tax returns for the tax years 1979 and 1980, indicating on each said return that substantially all

of their income was derived from Frank Salzano's wages and distributions from his plumbing supply business, petitioner Gun Hill Plumbing Supply Co., Inc. ("the corporation").

3. Petitioners were subjected to a field audit by the Audit Division which implemented a cash availability audit method after an inspection of petitioners' books and records indicated more income than that reported on petitioners' income tax returns.

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Itemized Deductions		
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Paid thru checking	(614.50)	-0-
Contributions	385.00	329.00
Paid thru checking	(15.35)	(10.00)
Food \$30 per week x 5 people		
x 52 weeks	7,800.00	7,800.00
Cash out of pocket	1,560.00	1,560.00
	<u>48,937.26</u>	
Less checks made out to		
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Nicholas, gave each member of petitioners' family \$3,000.00 or a total amount of \$15,000.00, but without mention of the date of the gifts or any substantiating documentation of the gifts.

15. Petitioners also submitted a letter, dated June 28, 1982, addressed to their accountant, Mr. Zimmerman, in which Lydia Salzano stated that she saved over \$20,000 in her house during the years of her marriage which she used to pay living expenses in the years 1979 and 1980.

16. Lydia Salzano's letter and Frank Salzano's testimony alleged that Frank Salzano's father deposited funds into accounts for each of his children during the years 1979 and 1980, but the account bank book for Frank Salzano was not introduced.

17. Frank Salzano's father allegedly established an account for Frank Salzano at Manufacturers Hanover Trust Co., account number 034-5515961-01, but the title of the account and, therefore control, is in petitioner Frank Salzano in trust for his wife, Lydia Salzano.

18. Petitioner Lydia Salzano won approximately \$7,000.00 in cash at Yonkers raceway in 1977 which she allegedly kept at home and used for living expenses in 1979 and 1980.

19. Using the additional taxable income determined for personal income tax purposes, the Audit Division calculated additional taxable sales of the corporation for the period January 1, 1979 through December 31, 1980:

1978 - Additional taxable sales per income tax audit:	\$31,240.00
1980 - Additional taxable sales per income tax audit:	<u>40,911.00</u>
1979/1980 <u>TOTAL</u>	\$72,151.00
x Tax Rate of 8%	\$5,772.08

20. On October 5, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner Gun Hill

Plumbing Supply Co. Inc. ascertaining liability for additional sales and use taxes due for the period December 1, 1978 through February 28, 1981 in the amount of \$5,772.08 and interest of \$1,582.18 for a total due of \$7,354.26.

21. With the exception of sales tax returns filed by the corporation for the audit period, December 1, 1978 through February 28, 1981, the Audit Division did not examine any books or records of the corporation with respect to sales tax.

22. The Audit Division issued notices of deficiency for corporation franchise tax under Article 9-A of the Tax Law for the years 1979 and 1980 dated September 6, 1982 and provided proof of certified mailing validated by the United States Post Office on September 15, 1982.

23. Petitioners, through their representative, filed a petition in response to said notices of deficiency which was dated December 22, 1982 and received by the Tax Appeals Bureau on December 28, 1982.

#### CONCLUSIONS OF LAW

A. That the cash availability audit method was a valid means of reconstructing petitioners' income for the audit period, tax years 1979 and 1980. (Matter of William Lasky and Ruth Lasky, State Tax Commission, July 18, 1984.)

B. That Tax Law § 689(e) places the burden of proof upon the petitioner in any case before the Tax Commission, except in three specifically enumerated instances, none of which is applicable herein.

C. That petitioners have not sustained their burden of proving that the cash availability audit method employed herein was either erroneous or improper.

D. That the Audit Division erred in assessing petitioner Gun Hill Plumbing Supply Co., Inc. for additional sales and use taxes based upon increased personal income tax of one officer of the corporation, without reviewing the

books and records of the corporation for their adequacy, and thereby estimated taxes without justification. (Tax Law § 1138[a]; Chartair, Inc. v. State Tax Commission, 65 AD2d 44.)

E. That petitioner, Gun Hill Plumbing Supply Co., Inc., did not timely file a petition within 90 days of issuance of the notices of deficiency for corporation franchise taxes due for the tax periods ending December 31, 1979 and December 31, 1980 and the application for a hearing is therefore denied (Tax Law § 1081[b]; § 1089[b])

F. That the petition of Frank Salzano and Lydia Salzano is denied and the Notice of Deficiency dated October 7, 1982 is hereby sustained together with applicable penalty and such additional interest as may be lawfully owing.


G. That the petition of Gun Hill Plumbing Supply Co., Inc. with regard to the assessment for additional corporation franchise tax is hereby denied, and the notices of deficiency dated September 6, 1982 are sustained together with such additional interest as may be lawfully owing.

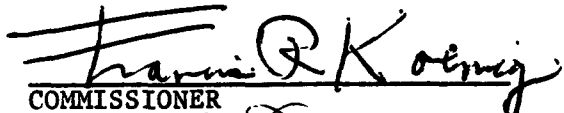
H. That the petition of Gun Hill Plumbing Supply Co., Inc. with regard to the assessment for additional sales and use taxes is hereby granted in accordance with Conclusion of Law "D" and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 5, 1982 is cancelled.

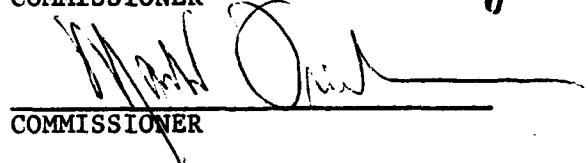
DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER