

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Harry's 1000 Baychester Avenue :
Service Center, Inc. :
:
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 6/1/80-2/28/82. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

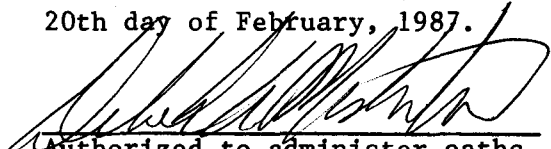
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of February, 1987, he/she served the within notice of Decision by certified mail upon Harry's 1000 Baychester Avenue Service Center, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry's 1000 Baychester Avenue Service Center, Inc.
1000 Baychester Avenue
Bronx, NY 10466

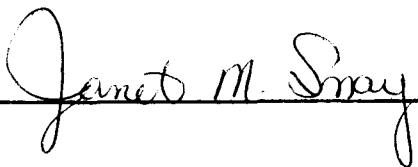
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
20th day of February, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

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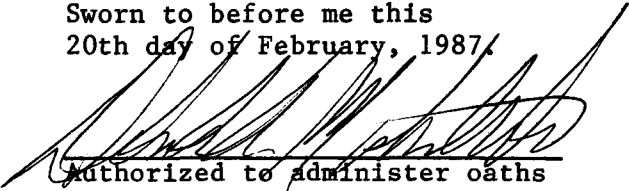
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of February, 1987, he served the within notice of Decision by certified mail upon Salvatore Zaffos, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Salvatore Zaffos
120-11 Donizetti Place
Bronx, NY

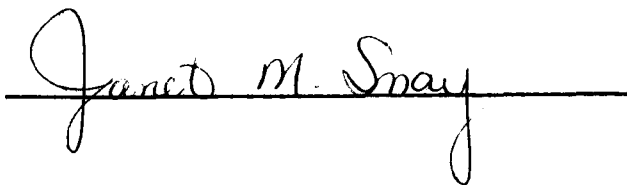
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
20th day of February, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



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

February 20, 1987

Harry's 1000 Baychester Avenue Service Center, Inc.
1000 Baychester Avenue
Bronx, NY 10466

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
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:
Salvatore Zaffos
120-11 Donizetti Place
Bronx, NY

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY'S 1000 BAYCHESTER AVENUE SERVICE CENTER, 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, 1980 through
February 28, 1982.

Petitioner, Harry's 1000 Baychester Avenue Service Center, Inc., 1000 Baychester Avenue, Bronx, New York 10475, 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, 1980 through February 28, 1982 (File No. 48420).

A 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 October 28, 1986 at 1:45 P.M. Petitioner appeared by Salvatore Zaffos. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether penalty should be cancelled and interest reduced to the minimum.

FINDINGS OF FACT

1. Petitioner, Harry's 1000 Baychester Avenue Service Center, Inc., operated a service station at 1000 Baychester Avenue, Bronx, New York during the years at issue.

2. An audit disclosed that petitioner did not have accurate books and records. Third party verification of purchases was obtained and gasoline and labor were marked up resulting in additional sales of \$92,166.57 for 1980 and \$84,228.78 for 1981.

3. On October 20, 1983, the Audit Division issued to petitioner a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for \$8,793.29 in tax, \$2,198.31 in penalty and \$3,012.90 in interest, for a total of \$14,004.50.

4. At the hearing, petitioner and the Audit Division agreed that sales and use tax owed by petitioner was \$7,293.31. Petitioner, however, maintained that penalty should be cancelled and interest reduced to the minimum.

5. No testimony or documentary evidence was offered by petitioner. Petitioner relies on: (a) the fact that tax returns were filed and the amounts shown due on the returns were paid; and (b) the fact that the field audit report did not state a specific reason for imposition of penalty.

CONCLUSIONS OF LAW

A. That Tax Law § 1145(a) imposes penalty and maximum interest on any person "failing to file a return or to pay or pay over any tax...." (Emphasis added.) Accordingly, penalty and maximum interest may be imposed on the additional tax due, even though returns were filed and the taxes shown due on the returns were paid.


B. That Tax Law § 1145(a) also provides that penalty may be remitted and interest reduced if the State Tax Commission determines that such failure was due to reasonable cause and not willful neglect. Here, petitioner offered no testimony or documentary evidence to establish reasonable cause; consequently, the penalty and maximum interest are to be sustained.

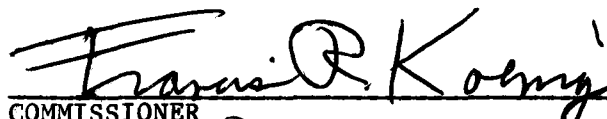
C. That the amount of tax is to be reduced to \$7,293.31 as provided in Finding of Fact "4" and penalty and interest are to be computed on such amount. Except for such adjustments, the petition of Harry's 1000 Baychester Avenue Service Center, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 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

CERTIFIED

P 319 376 945

MAIL



REASON CHECKED

Unclaimed

Addressee unknown

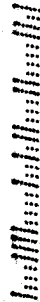
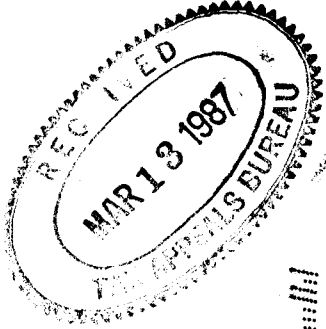
Insufficient Address

No such street number

No such office in state

No such person in this service

Harry's 1000 Baychester Avenue Service Center, Inc.
1000 Baychester Avenue
Bronx, NY 10466



B8

REQUEST FOR BETTER ADDRESS*ST*

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 <i>3/13/87</i>
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition <i>Dec. - 2/20/87</i>
Name <i>Harry's 1000 Baychester Avenue Service Center, Inc.</i>	
Address <i>1000 Baychester Avenue Bronx, N.Y. 10466</i>	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	<i>No such number</i>

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

February 20, 1987

Harry's 1000 Baychester Avenue Service Center, Inc.
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Bronx, NY 10466

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Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Salvatore Zaffos
120-11 Donizetti Place
Bronx, NY

STATE OF NEW YORK

STATE TAX COMMISSION

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HARRY'S 1000 BAYCHESTER AVENUE SERVICE CENTER, INC.	:	DECISION
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Sales and Use Taxes under Articles 28 and 29 of	:	
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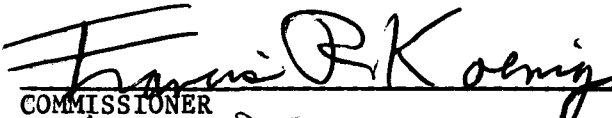
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DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER