

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sorisi Pizza, Inc. : AFFIDAVIT OF MAILING
and Joseph Sorisi, as Officer :
:
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 3/1/81-5/31/84. :

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 25th day of June, 1987, he/she served the within notice of Decision by certified mail upon Sorisi Pizza, Inc., and Joseph Sorisi, as Officer, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

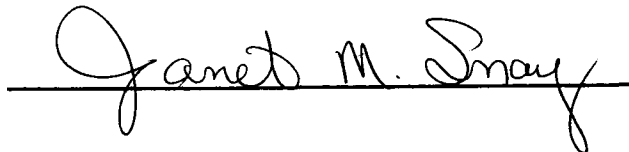
Sorisi Pizza, Inc.
and Joseph Sorisi, as Officer
57-01 Waldron Street
Corona, NY 11368

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
25th day of June, 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 :
Sorisi Pizza, Inc. : AFFIDAVIT OF MAILING
and Joseph Sorisi, as Officer :
:
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 3/1/81-5/31/84. :

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 25th day of June, 1987, he served the within notice of Decision by certified mail upon Gerald Davidoff, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald Davidoff
550 W. Merrick Rd.
Valley Stream, NY 11580

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
25th day of June, 1987.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

June 25, 1987

Sorisi Pizza, Inc.
and Joseph Sorisi, as Officer
57-01 Waldron Street
Corona, NY 11368

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:
Gerald Davidoff
550 W. Merrick Rd.
Valley Stream, NY 11580

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SORISI PIZZA, INC.	:	DECISION
AND JOSEPH SORISI, AS OFFICER	:	
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, 1981	:	
through May 31, 1984.	:	

Petitioners, Sorisi Pizza, Inc. and Joseph Sorisi, as Officer, 57-01 Waldron Street, Corona, New York 11368, 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, 1981 through May 31, 1984 (File Nos. 55243, 55635, 56131 and 56132).

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 March 9, 1987 at 1:15 P.M. Petitioners appeared by Gerald Davidoff, CPA. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

Whether a field audit properly determined additional sales and use taxes due.

FINDINGS OF FACT

1. Petitioner Sorisi Pizza, Inc. operates a pizzeria at 107-21 71st Avenue, Forest Hills, New York. Petitioner Joseph Sorisi is president of the corporation. (The term "petitioner" will hereinafter refer to petitioner Sorisi Pizza, Inc.)

2. A sales tax audit of petitioner's business was performed by the Queens District Office:

(a) Gross sales per the sales tax returns were compared to gross sales reported on the United States corporation income tax returns:

Fiscal Year Ending	Sales Per Sales Tax Returns	Sales Per Federal Income Tax Returns
2/28/82	\$ 24,563.00	\$67,082.00
2/28/83	30,574.00	77,334.00
2/29/84	47,687.00	72,493.00
TOTAL	\$102,824.00	\$216,909.00

On this basis alone, the sales tax returns appeared to be understated by \$114,085.00.

(b) The auditors analyzed 20 purchase invoices from one supplier, Delicato Distributors, covering the period January 12, 1983 through December 27, 1983. These invoices showed purchases of \$29,355.10. Purchases reported on the Federal income tax returns for the several fiscal years involved were as follows:

Fiscal Year Ending	Purchases Per Federal Income Tax Returns
2/28/82	\$12,750.00
2/28/83	24,930.00
2/29/84	20,622.00

The auditors noted that the above invoices did not appear to represent all of petitioner's purchases from Delicato for 1983. For the quarter ending May 31, 1982, petitioner had thirteen invoices from purchase transactions with Delicato which would mean 52 invoices per year on an annual basis. The auditors concluded not only that petitioner had underreported purchases on its Federal returns, but that most purchase invoices for 1983 had not been presented.

(c) As cash register tapes and daily books were not available and, as not all invoices had been presented, the auditors estimated tax based on an analysis of the quarter ending May 31, 1982 and an observation test.

(d) Flour purchases for the test quarter were 7,450 pounds. The auditors assumed that one pound of flour represented one pizza pie.

(e) Observation tests were conducted from 11:35 A.M. to 2:15 P.M. on Tuesday, July 24, 1984 and from 5:00 P.M. to 10:00 P.M. on Monday August 13, 1984.

(f) The observation tests showed that 98% of the pies were plain cheese pizzas and 2% had extra topping. Only one percent were sold as whole pies; 99% of the pies were sold by the slice. Whole pies were sold at \$6.00 each and slices (eight per pie) were sold for 80 cents.

(g) Based on the observation test and the above assumption that one pound of flour represented one pie, the number of pies sold was found to be 7,450 and receipts from pizza sales were determined as follows:

	<u>Amount per Quarter</u>
Sales as whole regular pies	\$ 438.00
Sales of regular slices	46,259.00
Sales of extra topping pies	1,073.00
Total Pizza Sales	<u>\$47,770.00</u>

(h) Other sales (per observation test) were found to be:

	<u>Amount per Quarter</u>
10 Hero sandwiches per day at \$3.50	\$ 3,185.00
5 Hot plates per day at \$4.00	1,820.00
150 Cups of soda per day at 60¢	8,190.00
100 Cups of ices per day at 50¢ (summer only)	2,275.00
Total Other Sales	<u>\$15,470.00</u>

(i) Total sales per quarter ([g] + [h] above) amounted to \$63,240.00, tax included, which, after allowing for sales tax, resulted in net audited taxable sales of \$58,420.00. Sales reported for the period ending May 31, 1982

were \$6,396.00, leaving additional taxable sales for the quarter of \$52,024.00. The error percentage was found to be 813.38 percent.

(j) The error percentage was applied to taxable sales of \$82,234.00 per sales tax returns for the period March 1, 1981 through November 30, 1983 and to one-half of taxable sales of \$41,279.00 reported for the periods ending February 28, 1984 and May 31, 1984 (as petitioner had doubled its reported taxable sales for said quarters), resulting in additional taxable sales of \$836,732.00 for the audit period. The additional tax amounted to \$68,784.35.

3. (a) On June 19, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Sorisi Pizza, Inc. for the period March 1, 1981 through May 31, 1981, for total tax due of \$6,329.52, total penalty due of \$1,582.38, plus interest. On November 26, 1984, the Audit Division issued a Notice of Assessment Review to Sorisi Pizza, Inc. adjusting the tax due for said period to \$3,887.92 and adjusting the penalty to \$971.98.

(b) On September 17, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Sorisi Pizza, Inc. for the period June 1, 1981 through May 31, 1984, for a total tax due of \$64,896.43, penalty of \$12,115.38, plus interest.

(c) Similar notices of determination and demands for payment of sales and use taxes due were issued to Joseph Sorisi, as President of Sorisi Pizza, Inc.

4. Petitioner actually obtains 36 eight-slice pizzas from every 50 pounds of flour, an average of 1.389 pounds of flour per pizza.

5. Petitioner submitted affidavits claiming that eight different persons purchased one 50 pound bag of flour from petitioner for personal use on a monthly,

weekly, or bi-weekly basis. The affidavits are found to be incredible, absent any testimony to support them.

CONCLUSIONS OF LAW

A. That Tax Law § 1138(a)(1) provides, in pertinent part, as follows:

"If a return required by this article is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the tax commission from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors...."

B. That where a taxpayer's records are incomplete or insufficient, the Audit Division may select a method reasonably calculated to reflect the sales and use taxes due and the burden then rests upon the taxpayer to demonstrate by clear and convincing evidence that the method of audit or amount of tax assessed was erroneous. Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 AD2d 858.

C. That in this case, petitioner's records were incomplete and insufficient in that no cash register tapes or daily books were presented and only partial invoices were made available to the auditors. Moreover, petitioner's sales reported for sales tax purposes were only a fraction of its sales reported for Federal income tax purposes (Finding of Fact "2(a)"). Based on the auditors' analysis of purchases, the purchases reported on the Federal income tax returns and the corresponding sales would also appear to be underreported. Accordingly, it was proper for the Audit Division to perform a test period audit resulting in the assessments issued herein.


D. That petitioner sustained its burden of proof to show that the number of pizzas per quarter is to be reduced from 7,450 to 5,364 (Finding of Fact "4") and the assessments are to be reduced accordingly.

E. That the petition of Sorisi Pizza, Inc. and Joseph Sorisi is granted to the extent indicated in Conclusion of Law "D" and the notices of determination and demands for payment of sales and use taxes due dated June 19, 1984 (as reduced by the Notice of Assessment Review) and September 17, 1984 are to be modified as set forth therein. Except as so granted, the petition is denied and the notices of determination and demands for payment of sales and use taxes due are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 25 1987



PRESIDENT



COMMISSIONER



COMMISSIONER

TA-26 (7/85)

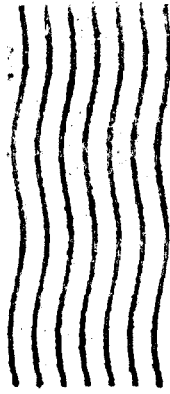
STATE OF NEW YORK

State Tax Commission

TAX APPEALS BUREAU

W. A. Harriman Campus

ALBANY, N.Y. 12227

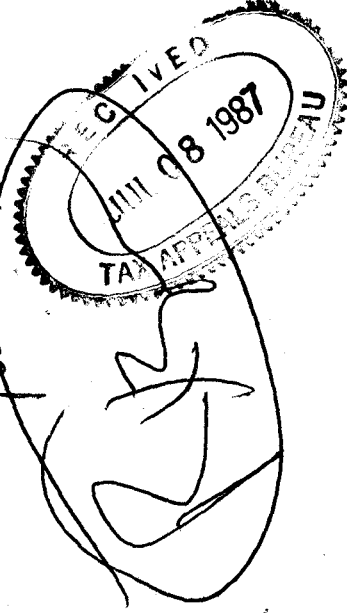


MAIL

~~Gerald Davidoff
550 W. Merrick Rd.
Valley Stream, NY 11580~~

~~Address is no address
No return number
Address is undeliverable
Address is unknown~~

Rec'd Exp



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sorisi Pizza, Inc. : AFFIDAVIT OF MAILING
and Joseph Sorisi, as Officer :
:
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 :
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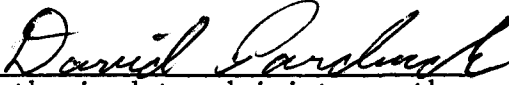
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 10th day of July, 1987, he served the within notice of Decision by certified mail upon Gerald Davidoff, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

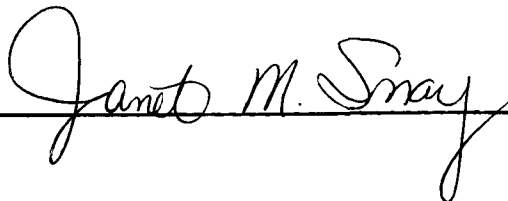
Gerald Davidoff
240-57 66th Avenue
Douglaston, NY 11362

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
10th day of July, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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 7/8/87
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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. 6/25/87
Name Gerald Davidoff	
Address 550 W. Merrick Rd. Valley Stream, N.Y. 11580 516-536-6611 718 631-2304	

Results of search by Files

<input type="checkbox"/> New address:	240-57 66 th Ave. Douglaston, N.Y. 11362
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	Moved Not Forwardable

Searched by	Section	Date of Search

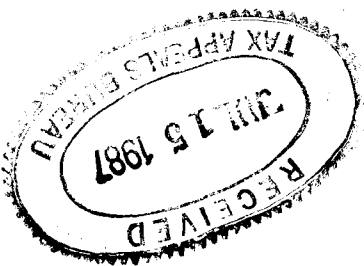
PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (7/85)
STATE OF NEW YORK
State Tax Commis
TAX APPEALS BURE
W. A. Harriman
ALBANY, N.Y. 1

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CERTIFIED
P-502 466-065
MAIL

Sovist Pizza, Inc.
and Joseph Sovist, as Officer
57-01 Waldron Street
Corona, NY 11368



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012-22
222.

REQUEST FOR BETTER ADDRESS

Requested by: Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 7/15/87
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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 - 6/25/87
Name Sorisi Pizza, Inc.	
Address and Joseph Sorisi, as Officer 57-01 Waldron Street Corona, N. Y. 11368	

Results of search by Files

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

Searched by J. Snay	Section Hearing	Date of Search 7/16/87
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

June 25, 1987

Sorisi Pizza, Inc.
and Joseph Sorisi, as Officer
57-01 Waldron Street
Corona, NY 11368

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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:
Gerald Davidoff
550 W. Merrick Rd.
Valley Stream, NY 11580

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SORISI PIZZA, INC.	:	DECISION
AND JOSEPH SORISI, AS OFFICER	:	
	:	
for Revision of a Determination or for Refund	:	
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D. That petitioner sustained its burden of proof to show that the number of pizzas per quarter is to be reduced from 7,450 to 5,364 (Finding of Fact "4") and the assessments are to be reduced accordingly.


E. That the petition of Sorisi Pizza, Inc. and Joseph Sorisi is granted to the extent indicated in Conclusion of Law "D" and the notices of determination and demands for payment of sales and use taxes due dated June 19, 1984 (as reduced by the Notice of Assessment Review) and September 17, 1984 are to be modified as set forth therein. Except as so granted, the petition is denied and the notices of determination and demands for payment of sales and use taxes due are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 25 1987


PRESIDENT


COMMISSIONER


COMMISSIONER