

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

THOMAS K. MANIMALA : 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 December 1, 1980 :
through February 28, 1982.

Petitioner, Thomas K. Manimala, 5 Randy Lane, Pleasantville, New York 10570, 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, 1980 through February 28, 1982 (File No. 48345).

On May 27, 1986, petitioner waived a hearing and submitted the case to the State Tax Commission based on the Department of Taxation and Finance file, plus additional documentation to be submitted prior to May 30, 1986. After due consideration, the Tax Commission renders the following decision.

ISSUES

I. Whether the assessment in question has been satisfied by payments made by another individual.

II. Whether petitioner was a person required to collect tax on behalf of Jolly Pizza Pub, Inc., and is personally liable for said corporation's unpaid sales tax.

FINDINGS OF FACT

1. Petitioner, Thomas K. Manimala, was listed as the sole officer of Jolly Pizza Pub, Inc., on the records of the New York State Liquor Authority. In addition, he owned six (6) shares of stock. Mr. Kurian Chacko owned 48

shares of the corporation's stock and Pradep Malhotra owned the remaining six shares of the issued and outstanding stock.

2. On December 9, 1982, a Notice and Demand for Payment of Sales and Use Taxes Due was issued to petitioner, as an officer of the corporation, for sales and use taxes determined to be due for the period December 1, 1980 through February 28, 1982 in the amount of \$3,276.08, plus penalties and interest. On May 5, 1983, a similar Notice and Demand was issued to Kurian Chacko. On April 24, 1985 and March 1, 1985, Mr. Chacko remitted two checks to the New York State Department of Taxation and Finance in the amounts of \$8,829.00 and \$500.00, respectively. These payments satisfied the liabilities stated in the said notices and demands. Accordingly, petitioner was sent a Notice of Assessment Review cancelling his liability on said assessment.

3. On April 12, 1983, a subsequent Notice and Demand for Payment of Sales and Use Taxes Due was issued to petitioner as an officer of the corporation, for sales and use taxes determined to be due for the period December 1, 1980 through February 28, 1982, in the amount of \$718.95 plus interest and penalty. On May 5, 1983 a similar Notice and Demand was issued to Kurian Chacko. The records of the Department of Taxation and Finance indicate that no payments were made or applied toward this assessment.

4. The taxes referred to in Findings of Fact "2" and "3" were determined to be due under section 1138(a) of the Tax Law. Accordingly, the form used was incorrect in each case; the taxes should have been assessed on a Notice of Determination and Demand for Payment of Sales and Use Taxes Due.

5. The tax at issue is for the following periods and amounts:

<u>PERIOD ENDING</u>	<u>TAX DUE</u>	<u>PENALTY DUE</u>	<u>INTEREST DUE</u>
2/28/81	\$ 49.13	\$ 12.28	\$12.52
5/31/81	60.22	14.45	13.54
8/31/81	48.02	10.08	1.96
11/30/81	26.38	4.74	4.16
2/28/82	535.20	80.28	38.06

6. Petitioner sold his interest in the coporation to Mr. Chacko on July 28, 1981.

7. Petitioner, although listed as an officer of the corporation on the State Liquor Authority records, was merely an investor in Jolly Pizza Pub, Inc. Petitioner's name was entered as president of the corporation on the advice of legal counsel, as he was the only United States citizen involved with the corporation. Petitioner and his associates believed that entering petitioner's name as president on the application for a license would expedite the granting of the license.

8. Kurian Chacko was the officer of the corporation responsible for the day to day operations, as well as the finances, of the corporation.

9. The New York State and local sales and use tax returns for Jolly Pizza Pub, Inc., for the period December 1, 1980 through February 28, 1981, were signed by Kurian Chacko with title of president.

CONCLUSIONS OF LAW

A. That as noted in Finding of Fact "3", the second Notice and Demand in the amount of \$718.95 was not paid as part of the two payments made by Mr. Chacko and remains open.

B. That section 1133(a) of the Tax Law provides, in pertinent part, as follows:

"Liability for the tax - (a) Except as otherwise provided in section eleven hundred thirty-seven, every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article."

C. That section 1131(1) of the Tax Law provides as follows:

"(1) 'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel. Said terms shall also include any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership or any employee of an individual proprietorship who as such officer, director or employee is under a duty to act for such corporation, partnership or individual proprietorship in complying with any requirement of this article; and any member of a partnership."

D. That petitioner, Thomas K. Manimala, was not a person required to collect tax on behalf of Jolly Pizza Pub, Inc. within the meaning of section 1131(1) of the Tax Law.

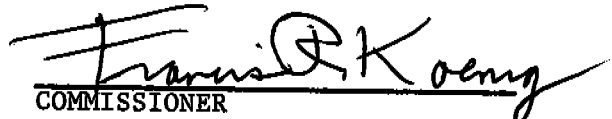
E. That the petition of Thomas K. Manimala is granted and the Notice and Demand¹ issued against him is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

¹ As noted in Finding of Fact "4", the assessment was issued on a Notice and Demand instead of a Notice of Determination and Demand for Payment of Sales and Use Taxes Due.