

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SOL GELIEBTER

d/b/a SOL'S MODERN LUNCHEONETTE

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ Period  
August 31, 1965-August 7, 1967.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

MARTHA FUNARO, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 8th day of November, 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon SOL GELIEBTER  
LUNCHEONETTE d/b/a SOL'S MODERN  
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Sol Geliebter  
d/b/a Sol's Modern Luncheonette  
2409 Stuart Avenue  
Brooklyn, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

8th day of November, 1973




STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
Mario A. Procaccino  
~~NOTARY PUBLIC~~, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
November 8, 1973

Mr. Sol Geliebter  
d/b/a Sol's Modern Luncheonette  
2409 Stuart Avenue  
Brooklyn, New York

Dear Mr. Geliebter:

Please take notice of the **DETERMINATION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **sections 1138 & 1243**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**L. Robert Leisner**

HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
SOL GELIEBTER :  
d/b/a SOL'S MODERN LUNCHEONETTE : DETERMINATION  
for a Revision of a Determination or  
for Refund of Sales and Use Taxes under :  
Articles 28 and 29 of the Tax Law for  
the Period August 31, 1965 - August 7, :  
1967. :  
:

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Applicant, Sol Geliebter d/b/a Sol's Modern Luncheonette, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 31, 1965 through August 7, 1967.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York City, on December 15, 1971, before Lawrence A. Newman, Hearing Officer. The taxpayer appeared in person and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Sol Sies, Esq., of Counsel).

#### ISSUES

Did the taxpayer show any error in the determination of taxable and nontaxable sales? Was the penalty applicable?

#### FINDINGS OF FACT

1. The taxpayer, Sol Geliebter d/b/a Sol's Modern Luncheonette, timely filed New York State sales and use tax returns for the period August 31, 1965 through August 7, 1967.

2. Notices of determination of sales and use taxes (and

penalties) for the period August 31, 1965 through August 7, 1967 was issued on May 1, 1969, against the taxpayer, Sol Geliebter d/b/a Sol's Modern Luncheonette, under Notice Nos. 90,130,684 and 90,130,685.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax and penalties.

4. The taxpayer asserted that the nontaxable sales were considerable and that he had paid the full tax.

5. The taxpayer sold some food, cake and coffee for under \$1.00 which was nontaxable. He also sold newspapers which were nontaxable. He asserted that cigarettes were nontaxable. The taxpayer sold candy, soft drinks, cigarettes and lunches over \$1.00.

6. The taxpayer had inadequate books and records. The examiner surveyed the business and determined that approximately one-half of the taxpayer's sales were nontaxable.

#### CONCLUSIONS OF LAW

A. The taxpayer's sales of cigarettes, soft drinks, candy and lunches of over \$1.00 were subject to tax. The taxpayer has failed to prove error in the examiner's finding that one-half of the sales were subject to tax.

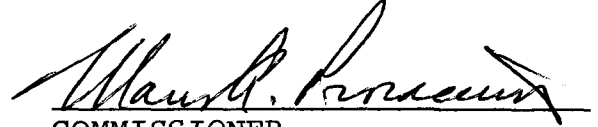
B. The application for revision is denied and the determination of the deficiency in sales tax is sustained.

C. The taxpayer failed to keep adequate books and records. The determination of the penalty is sustained.

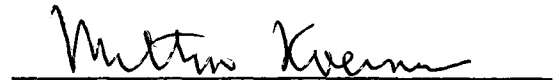
D. Pursuant to the Tax Law interest shall be added to  
the total amount due until paid.

DATED: Albany, New York  
November 8, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER