

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILBUR RAPS, D/B/A CLARENCE HOLLOW  
INN

For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ periods 8/1/65 -  
8/31/68

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 21st day of March , 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Wilbur Raps

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Wilbur Raps

d/b/a Clarence Hollow Inn  
10782 Main Street  
Clarence, 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

21st day of March , 1972.

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**March 21, 1972**

**Wilbur Raps  
d/b/a Clarence Hollow Inn  
10782 Main Street  
Clarence, New York**

**Dear Mr. Raps:**

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

Please take further notice that pursuant to **sections 1243 & 1138**  
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                                     | : |               |
| WILBUR RAPS, D/B/A CLARENCE HOLLOW INN | : | DETERMINATION |
| for Revision of a Determination or for | : |               |
| Refund of Sales and Use Taxes under    | : |               |
| Articles 28 and 29 of the Tax Law for  | : |               |
| the periods 8/1/65 - 8/31/68.          | : |               |

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The taxpayer applied for a revision of a determination of sales tax for the period of August 1, 1965 to August 31, 1968. A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York on June 23, 1971. The taxpayer appeared pro se and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Where the taxpayer has nontaxable sales of ten cent draft beer may sales tax be imposed on his gross sales?

II. During the period in issue, was the taxpayer liable for penalties added to the proposed sales taxes?

FINDINGS OF FACT

1. The Sales Tax Bureau issued a notice of determination and demand for payment of sales and use taxes under Notice No. 90,202,463 and Identification No. 16-09042 26.

2. The taxpayer applied for a hearing and a revision of a determination of sales tax for the period of August 1, 1965

to August 31, 1968.

3. The taxpayer had numerous sales of ten cent beer on which he collected no tax. He had gone to the sales tax office when the sales tax law was passed and asked if he could pay the tax on the gross taxable receipts collected and he was informed that the tax was to be collected from the customer.

4. Initially there was some question about the calculations of the audit, but after testimony, the parties agreed at the hearing that the audit was not indispute.

5. The taxpayer contested the legality of the assessment contending that this was a consumer tax and he should not have to pay the tax for the consumer. He also contended that he should not be liable for any penalty because he had done everything possible to comply with the law. These contentions were opposed by the Sales Tax Bureau.

CONCLUSIONS OF LAW

A. Aggregate collections of tax based on total receipts are authorized by the Tax Law, section 1132 subdivision (b).

B. The assessment of sales determined by the Sales Tax Bureau is sustained.

C. The taxpayer acted in good faith and it is determined that he is not liable for any penalty, and in this respect, his application is sustained.

D. Interest shall be added to the total amount of tax due until paid.

DATED: Albany, New York  
*March 31, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
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COMMISSIONER

*Blaise Mander*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koern*  
\_\_\_\_\_  
COMMISSIONER