

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~XXXXXX~~ Application

of

RED DOOR TAVERN

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(s)
Sept. 1, 1967 - May 31, 1969

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

State of New York
County of Albany

Linda Wilson, 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 22nd day of February, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon RED DOOR TAVERN

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
Red Door Tavern
wrapper addressed as follows: c/o Richard F. Hettrich
400 Lake Avenue
Hamburg, 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

22nd day of February, 1972

Martha Funnars

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

RED DOOR TAVERN

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(s)
Sept. 1, 1967 - May 31, 1969

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

State of New York
County of Albany

Linda Wilson, 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 22nd day of February, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon H. JARVIS TURNER, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: H. Jarvis Turner, Esq.
1628 Liberty Bank Building
Buffalo, New York 14202

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

22nd day of February, 1972

Martha Turner

Linda Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

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
February 22, 1972

**Red Door Tavern
c/o Richard F. Hettrich
400 Lake Avenue
Hamburg, New York**

Gentlemen:

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

Please take further notice that pursuant to section(s)
1138 & 1243 of 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 relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
L. Robert Leisner
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

The applicant appeared through H. Jarvis Turner, Esq. and the Sales Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq. of Counsel).

FINDINGS OF FACT

1. Notices of Determination and Demand for Payment of Sales and Use Taxes due were issued on December 14, 1967 and July 15, 1969 under identification number 16-0650459 and notice numbers 90,753,785 and 90,762,237, the first notice covering the periods ending Aug. 31, 1965 thru Aug. 31, 1967 and the second notice covering the periods ending Sept. 1, 1967 thru May 31, 1969. Demands for hearings were timely filed.

2. The principal contentions of the taxpayer were that the burden of proof was not on the taxpayer, that the burden of proof was on the Sales Tax Bureau, that the formula of additional audit sales to arrive at an effective tax rate, and the tax computed were erroneous.

3. The evidence consisted of testimony of the auditor, the petitioner, work sheets and computations on behalf of both, and testimony concerning the allowances for overpouring, spillage, waste, theft, and pilferage.

4. The auditor's effective rate based on a breakdown of component sales and projected mark up of purchases was reasonable and amply allowed for overpouring, spillage, waste, theft and pilferage.

5. The determination of tax was reasonable and correct.

6. The petitioner did not show that the notices of determination were erroneous.

7. The petitioner kept proper records, acted in good faith, and penalties against the petitioner are not justified.

DECISION

A. The notices of determination of tax under notice numbers 90,753,785 and 90,762,237 are sustained.

B. The penalties proposed by said notices are cancelled and abated.

C. Pursuant to the Tax Law interest on the tax shall be added to the total amount due until the date of payment.

DATED: Albany, New York

February 22, 1972

STATE TAX COMMISSION

Norman Gelfman
COMMISSIONER

Beese Macaley
COMMISSIONER

Milton Koerner
COMMISSIONER

**BUREAU OF LAW
MEMORANDUM**

TO
FROM : Ben Sheber
Sales Tax Bureau
SUBJECT: James Scott

Transfer of Files

**Red Door Tavern
39 E. 49th Street Corporation
T/A Chapman's Bar-Restaurant
West Side Neon Sign Corporation**

The taxpayers in the foregoing matters have failed to institute an Article 78 proceeding within the statutory period of time.

Said files are herewith returned for further administrative disposition.

Associate Attorney

**JS:ms
Enc.
June 28, 1972**

**cc: Edward Rook, Sec.
State Tax Commission**