

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STARDUST FOOD DELIGHT, INC.:

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

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 Aug.: 1, 1965
through May 31, 1969

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 30th day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Stardust Food
Delight, Inc. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Stardust Food Delight, Inc.
138 East Park Avenue
Long Beach, 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

30th day of March, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STARDUST FOOD DELIGHT, INC.

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 Aug. 1, 1965
through May 31, 1969

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 30th day of March , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Kremer, Fine &
Kilgannon (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Kremer, Fine & Kilgannon
20 West Park Avenue
Long Beach, 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

30th day of March , 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 30, 1972

Stardust Food Delight, Inc.
138 East Park Avenue
Long Beach, New York

Gentlemen:

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

Please take further notice that pursuant to section 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,

Lawrence A. Newman
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
STARDUST FOOD DELIGHT, , INC. : 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 Period :
August 1, 1965 through May 31, 1969. :
:

An application was filed on behalf of Stardust Food Delight, Inc. 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 August 1, 1965 through May 31, 1969.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on January 12, 1972. The applicant was represented by Kremer, Fine & Kilgannon, Esqs. (Arthur J. Kremer, Esq., of Counsel). The Sales Tax Bureau was represented by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

The appropriate rate of sales taxes applicable to sales of take-out foods in the City of Long Beach, County of Nassau.

FINDINGS OF FACT

1. The applicant, Stardust Food Delight, Inc. filed New York State sales and use tax returns for the period August 1, 1965 through May 31, 1969.

2. On September 12, 1969, the treasurer of Stardust Food Delight, Inc. signed a consent extending the period for assessment of the periods in issue to December 20, 1970.

3. On April 2, 1970, the Sales Tax Bureau issued a notice of determination numbered 90,741,993 in the amount of \$5,339.48 plus statutory penalties and interest. The notice was based on a determination that the vendor did not report and remit the proper local sales tax due.

4. On June 16, 1970, the vendor filed an application for revision of the determination or for refund. The applicant questions the propriety and legality of imposing the local sales tax to the sale of "take-out" foods.

5. The applicant operates a retail store under the business name of Chicken Delight in the City of Long Beach, in the County of Nassau, State of New York. The principal business activity is the sale of prepared food for off-premises consumption. The applicant collected from its customers and remitted to the Sales Tax Bureau the statewide rate of sales tax on his food sales from August 1, 1965 to May 31, 1969.

6. In accordance with Article 29 of the Tax Law, and effective August 1, 1965 through May 31, 1969, a local ordinance was lawfully imposed in and for the City of Long Beach and in the County of Nassau imposing a local sales tax at the rate of 3%. The local tax, in conformity with Article 28 of the Tax Law, was applicable to retail sales of prepared foods for off-premises consumption.

DETERMINATION

A. The effective local sales tax rate for the City of Long Beach in the County of Nassau from August 1, 1965 through May 31, 1969 was 3%, and applicable in addition to the lawful statewide rate, to the sale of prepared food for off-premises consumption.

B. The penalty and interest imposed on the notice of determination is reduced to the equivalent of 6% per annum to date of payment.

C. Except as stated in item (B) above, the notice of determination is sustained and the application for revision is denied.

DATED: Albany, New York
March 30, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Masley

COMMISSIONER

William Koenig

COMMISSIONER