

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

39 EAST 49TH STREET
CORPORATION

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

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 ~~(years)~~ period August 1, 1965
through November 30, 1966.

State of New York
County of Albany

Rae Zimmerman, 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 25th day of February, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon 39 East 49th Street Corporation (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: 39 East 49th Street Corporation
Chapman's Restaurant
20 East 53 Street
New York, New York Att: Raymond Gura
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

25th day of February, 1972.

Martha F. Finkels

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
39 EAST 49th STREET CORPORATION :
AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL
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 1, 1965
through November 30, 1966.

State of New York
County of Albany

Rae Zimmerman , 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 25th day of February, 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Mario Verini, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mario Verini, Esq.
c/o Milton Sheen, Esq.
11 Park Place
New York, 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

25th day of February , 1972.

Martha F. Farnsworth

Rae Zimmerman



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

Albany, New York
February 25, 1972

**39 East 49th Street Corporation
Chapman's Restaurant
20 East 53 Street
New York, N.Y.**

Attention Raymond Gura

Gentlemen:

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

Please take further notice that pursuant to **sections 1138 and 1243 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **four 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	:	
39 EAST 49th STREET CORPORATION	:	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	:	
November 30, 1966.	:	

The 39 East 49th Street Corporation, a registered vendor, filed an application 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 November 30, 1966. A formal hearing was held before Lawrence A. Newman, Hearing Officer, at the offices of the State Tax Commission in the City of New York on November 26, 1969, and concluded on February 23, 1971. The applicant was represented by Milton Sheen, Esq., (Horace E. Berque, Esq. and Mario Verini, Esq., of Counsel). The Sales Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., and Alexander Weiss, Esq., of Counsel).

ISSUE

Whether the audit of the vendor's books and records, and the resulting findings were proper and correct.

FINDINGS OF FACT

1. The applicant, 39 East 49th Street Corporation, filed sales and use tax returns for the periods August 1, 1965 through August 31, 1966.
2. On July 31, 1967, the Sales Tax Bureau issued a Notice of Determination and demand numbered 90,752,384 in the amount of \$9,317.76, plus penalties and interest.

3. The applicant timely filed the equivalent of an application for redetermination or for refund.

4. The applicant was a restaurant owner and operator at two successively different locations during the periods under audit.

5. An audit of the applicant's books and records was conducted by examiners from the Sales Tax Bureau. The applicant's general ledger, and cash and receipts book were examined. The applicant could not substantiate his listing of exempt outgoing food sales. In accordance with established audit procedures within the Sales Tax Bureau, sample tests of individual restaurant guest checks were made to determine an effective rate of sales tax, and the proportions of liquor and food sales. Markup tests were made of sample periods to compare liquor and beer purchases with corresponding sales to customers. In this respect, consideration was given to the size of liquor "shot" glasses used, estimated spillage and courtesy drinks. Undated menus were submitted to the examiner at the time of the audit to determine the prices of food served. An additional set of undated menus were submitted to the Hearing Officer.

6. The applicant has failed to disprove the correctness of the audit conducted by the Sales Tax Bureau or of the resulting findings and computations.

DETERMINATION

A. The results of the examination of the vendor's books and records, and the resulting tax liability, are correct.

B. The determination is sustained and the application is accordingly denied.

DATED: Albany, New York

February 25, 1972

STATE TAX COMMISSION

Upoman Galtman
COMMISSIONER

Bruce Manley
COMMISSIONER

Mittus Koenig
COMMISSIONER