

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARCADE SANDWICH SHOP

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)) period 6/1/66-  
2/28/70.

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

State of New York  
County of Albany

JOYCE S. VAN PATTEN , 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 Bianchi &  
Aicari, P.A. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Bianchi & Zicari, P.A.

275 Lake Avenue  
Rochester, New York 14608

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.

Franklin J. ...

Joyce S. Van Patten

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STATE TAX COMMISSION

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State of New York  
County of Albany

JOYCE S. VAN PATTEN , 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 , 19 73, she served the within  
Notice of Decision (or Determination) by ~~(certified)~~ mail upon Arcade  
Sandwich Shop ~~x(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Arcade Sandwich Shop  
16 Main Street E.  
Rochester, 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)~~  
~~xof)~~ 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.

Maitha S. ...

Joyce S. Van Patten



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

**Mario A. Procaccino**

~~NORMAN F. GALLMAN, 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

Arcade Sandwich Shop  
16 Main Street, E.  
Rochester, 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 deci-  
sion must be commenced within **four months**  
from 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 relative  
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

Enc.

cc: Petitioner's Representative  
Law Bureau



4. During the years in question, the taxpayer operated the Arcade Sandwich Shop, a small luncheonette, coffee and sandwich shop in an office and arcade building in Rochester, New York. Coffee was sold for 10 cents and sandwiches for 50 cents and 60 cents.

5. The income tax examiner determined that the taxpayer had food sales of over \$1.00 on which no tax had been paid. The taxpayer had just recovered from a heart attack and although well, he had not located and assembled all of his records. The examiner determined on a check of three test days that the percentage of taxable sales was \$4,770.00.

6. The taxpayer's accountant produced bundles of invoices and tabulations of these invoices and contended that the taxable sales were less than 25% of taxpayer's total sales. The invoices tend to support his statements but total sales of the day and tapes do not appear.

7. The taxpayer testified that there were a number of sales for coffee and sandwiches which were nontaxable. Also, that he had made diligent efforts to collect all the tax due and had kept it separate. There appeared to be confusion on multiple orders on one check. If a stenographer ordered coffee and sandwiches for a number of persons upstairs and paid for the order on one sales check which exceeded a dollar, sometimes a sales tax was collected and other times not, due to the press of business at the rush hour or the inexperience of the waitress helping at the counter.

8. On all the evidence of the sales tax examiner's work papers and also including the additional records of the taxpayer's accountant and the testimony of the taxpayer, it is found as a fact that 30% of the sales were subject to tax during the period in question.

CONCLUSIONS OF LAW

A. A sales check for more than \$1.00 was subject to tax. Considering the taxpayer's health and the rush hours and at times inexperienced help, he exercised good faith and all the penalties are cancelled.

B. Thirty percent of the taxpayer's sales were subject to sales tax during the years in question. The tax shall be recomputed accordingly.

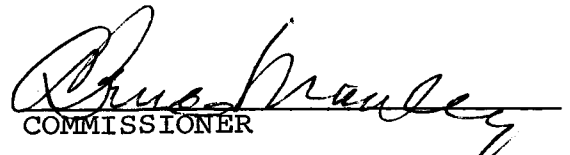
C. The sales tax assessments except as modified herein is sustained, and the taxpayer's application is in all other respects denied.

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

  
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COMMISSIONER