

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FAIRVIEW LANES BEST TENANT CORPORATION :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~ :
August 28, 1966 through September 20, 1968.

State of New York
County of Albany

Catherine Steele, 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 5th day of August, 1976, she served the within
Notice of Determination by ~~XXXXXX~~ mail upon Fairview Lanes Best
Tenant Corporation (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Fairview Lanes Best Tenant Corporation
1407 Fairport Road
Fairport, New York 14450
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~XXXXXX~~ 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

5th day of August, 1976

Janet Mack

Catherine Steele

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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of

FAIRVIEW LANES BEST TENANT CORPORATION:

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund
of Sales & Use :
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s) XXXXXXXX~~ Period
August 28, 1966 through September 20, 1968.

State of New York
County of Albany

Catherine Steele, 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 5th day of August, 1976, she served the within Notice of Determination by ~~certified~~ mail upon Bernard P. Birnbaum, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bernard P. Birnbaum, C.P.A.
Suite 200 Powers Building
Rochester, New York 14614
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) 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

5th day of August, 1976

Catherine Steele

Janet Mach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 5, 1976

TELEPHONE: (518) **457-3850**

Fairview Lanes Best Tenant Corporation
1407 Fairport Road
Fairport, New York 14450

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 **4 months**
from the date of this notice.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	DETERMINATION
FAIRVIEW LANES BEST TENANT CORPORATION	:	
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 28, 1966 through September 20,	:	
1968.	:	

Applicant, Fairview Lanes Best Tenant Corporation, 1407 Fairport Road, Fairport, New York 14450, applied for a 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 28, 1966 through September 20, 1968.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York on September 20, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Bernard P. Birnbaum, C.P.A. and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Solomon Seis, Esq., of counsel).

ISSUE

Was the value of the personal property correctly stated by the sale price of the business which was the book value of the personalty or by the appraisal value given at the hearing.

FINDINGS OF FACT

1. The taxpayer, Fairview Lanes Best Tenant Corporation, timely filed New York State sales and use tax returns for the period August 28, 1966 through September 20, 1968.

2. A Notice of Determination of sales and use taxes and penalties due for the period August 28, 1966 through September 20, 1968, was issued on July 31, 1969, against the taxpayer, Fairview Lanes Best Tenant Corporation, under Notice No. 90,759,803.

3. The taxpayer, Fairview Lanes Best Tenant Corporation, applied for a revision of the determination of the deficiencies in sales tax.

4. The taxpayer, Fairview Lanes Best Tenant Corporation, **bought** a bowling alley business and all of its personal property and realty from Fairview Lanes Inc., on about August 26, 1966. The real estate was sold for \$200,000.00 which was paid by cash and assumption of a mortgage. The business was sold for \$250,000.00 and paid for by assumption of \$141,505.90 of indebtedness to Brunswick and others, and by cash and notes to the seller in the amount of \$115,311.59. This also covered a small inventory.

5. The book value of the bowling equipment, bar and restaurant equipment, and leasehold improvements totaled \$186,439.27.

6. At the hearing the taxpayer purchaser, Fairview Lanes Best Tenant Corporation, contended that good will should be given a value of \$125,000.00 and the equipment should be valued at about \$125,000.00 which was the balance of the purchase price of the business.

7. The book value of leasehold improvements alone was \$7,895.89.

8. A witness who had some familiarity with bowling alleys appraised the value of the bowling alleys at about \$78,000.00, the equipment at about \$75,000.00 and the goodwill at about \$125,000.00, based on bowling contracts.

9. The taxpayer acted in good faith throughout the periods in question.

CONCLUSIONS OF LAW

A. That taking into consideration the price of the business, the appraisals, and all of the evidence, and considering that improvements to the leasehold would be part of the realty, we find that the value of the taxable personal property consisting of the bowling equipment, the bar, the restaurant, the alleys, and the other equipment sold to the taxpayer, Fairview Lanes Best Tenant Corporation, was \$178,543.38.

B. That sales tax shall be recomputed accordingly.

C. That the penalties are cancelled.

D. That interest shall be due on the tax until paid.

DATED: Albany, New York
August 5, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER