

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BOB'S RESTAURANT

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(s) :
August 1, 1965 through February 28, 1967.

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 24th day of August, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Bob's Restaurant

~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bob's Restaurant
1107 Sycamore
Buffalo, 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 Postal Service within the State of New York.

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

24th day of August, 1976

Catherine Steele

Just Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BOB'S RESTAURANT

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(s)
August 1, 1965 through February 28, 1967.

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 24th day of August, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon James Hall, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: James Hall, Esq.
Hall & McMahon
17 Court Street
Buffalo, 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 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

24th day of August, 1976

Janet Mack

Catherine Steele



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

August 24, 1976

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

**Bob's Restaurant
1107 Sycamore
Buffalo, 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 **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 E. 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	:	
BOB'S RESTAURANT	:	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 Periods August 1, 1965	:	
through February 28, 1967.	:	

Bob's Restaurant, 1107 Sycamore, Buffalo, New York, applied for a redetermination of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through February 28, 1967.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Niagara Square, Buffalo, New York, on September 17, 1970, before L. Robert Leisner, Hearing Officer.

The applicant appeared by Hall & McMahon, (James Hall, Esq., of counsel). The Sales Tax Bureau appeared by Edward H. Best, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Was the determination of the sales tax by the Sales Tax Bureau based on a projection of gross receipts correct?

FINDINGS OF FACT

1. A Notice of Determination and demand for payment of sales and use taxes was sent to the taxpayer on August 4, 1967, under Notice No. 90752423 and Identification No. 16-0877471.

2. The taxpayer filed all sales and use tax returns in a timely fashion for the period in question. Taxpayer made a timely application for a revision of the determination of the sales tax.

3. The Sales Tax Bureau proposed a sales tax of 5.03% of sales. This rate, above the statutory rate of 4% was developed on the basis of a theoretical computation of sales based on the amount of taxpayer's beer and liquor purchases.

4. The effective amount of sales per liquor bottle was reduced by spillage, dispensing of free drinks, free parties, promotional reduced price sales, reduced price large volume sales and pilferage. Sales of certain types of mixed drinks required larger amounts of liquor than that allowed by the Sales Tax Bureau.

5. The tax examiner assumed that the taxpayer sold thirty straight whiskey drinks out of each fifth purchased and eighteen mixed drinks from each fifth.

6. Data compiled by the tax examiner in attempting a percentage markup projection of taxpayer's sales was incomplete.

CONCLUSIONS OF LAW

A. That the sales tax examiner's projected computation of sales, based on taxpayer's purchased, did not adequately reflect the many factors which affected the taxpayer's actual business and sales. (Gasper v. Commissioner, 225 Fed. 284).

B. That the taxpayer's recordation was inadequate to support the purported taxable sales figures contained in taxpayer's sales tax returns for the period in question.

C. That the taxpayer timely filed his sales tax returns and acted in good faith.

D. That since Sales Tax Bureau's estimation of taxable sales did not properly reflect certain relevant factors, the assessed additional tax shall be reduced by one-half to adequately reflect estimated taxable sales errors. Interest shall be computed on this reduced figure.

E. That all penalties are cancelled.

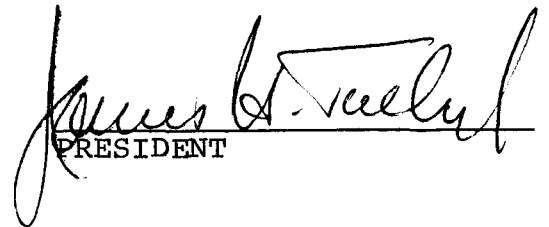
F. That the application of Bob's Restaurant is granted to the extent of the reduction of tax liability in accordance with the directions set out in this decision and the cancellation of

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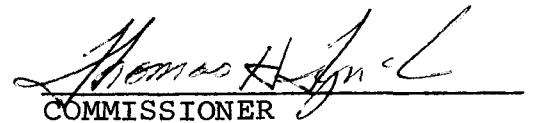
all penalties. The application is denied to the extent of imposing the reduced tax liability authorized by this decision.

DATED: Albany, New York
August 24, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER