

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~
Application :

of

JOSEPH CANALI d/b/a

WAUKASHA GRILL

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 6/17/70-
11/30/71.

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

State of New York
County of Albany

JANET MACK , 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 9th day of October , 19 75, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon JOSEPH CANALI d/b/a

WAUKASHA GRILL ~~(representative of)~~ the petitioner in the within

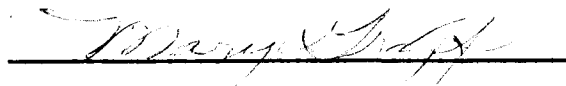
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Joseph Canali
d/b/a Waukasha Grill
Long Lake - Moody Road
Tupper Lake, New York 12986

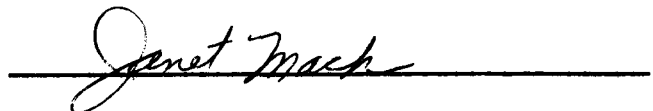
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

9th day of October , 1975







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

~~XXXXXXXXXXXXXXXXXXXX~~

BUILDING 9, ROOM ¹⁰⁷~~2107~~
STATE CAMPUS
ALBANY, N.Y. 12227
AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright
Mr. Coburn
Mr. Leisner
(518) 457-3336

DATED: Albany, New York
October 9, 1975

Mr. Joseph Canali
d/b/a Waukasha Grill
Long Lake - Moody Road
Tupper Lake, New York 12986

Dear Mr. Canali:

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

Please take further notice that pursuant to
Section(s) **1138 and 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.

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: ~~XXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
JOSEPH CANALI d/b/a	:	
WAUKESHA GRILL	:	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 June 17, 1970	:	
through November 30, 1971.	:	
	:	

Applicant, Joseph Canali d/b/a Waukesha Grill, Long Lake - Moody Road, Tupper Lake, New York 12986, 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 June 17, 1970 through November 30, 1971.

A formal hearing was held at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on June 19, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer appeared pro se, and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (James A. Scott, Esq. of counsel).

ISSUE

Was additional sales tax due from applicant, Waukesha Grill, for the period June 17, 1970 through November 30, 1971?

FINDINGS OF FACT

1. Applicant, Joseph Canali d/b/a Waukesha Grill, timely filed New York State and local sales and use tax returns for the period June 17, 1970 through November 30, 1971.
2. A Notice of Determination and Demand for payment of sales and use taxes for the period June 17, 1970 through November 30, 1971 was issued on April 17, 1972.
3. On August 4, 1972, a Notice of Assessment Review was issued to reflect a revision in the amount of sales tax due.
4. The taxpayer applied for revision of the determination.
5. Applicant, Joseph Canali d/b/a Waukesha Grill, operated a restaurant and bar on Long Lake - Moody Road in Tupper Lake, New York, during the period June 17, 1970 through November 30, 1971.
6. Applicant, Waukesha Grill's mark-up on purchases relating to sale of food was 150% during the period June 17, 1970 through November 30, 1971.

7. The mark-up on the purchase of liquor by the applicant was 430% for the same period.

8. Applicant, Waukesha Grill's mark-up on purchases relating to the sale of beer was 293% for the period June 17, 1970 through November 30, 1971.

9. The effective tax rate applicable to applicant as a resident of Franklin County, New York, was 5% on the sale of food and beverages over \$1.00 during the period ending May 31, 1971 and 7% on the sale of food and beverages during the period ending November 30, 1971.

10. Applicant, Waukesha Grill's sales as determined by applying the aforesaid mark-ups to purchases and sales tax due as determined by applying the aforesaid effective rate to sales for the period June 17, 1970 through November 30, 1971 were as follows:

<u>Period Ended</u>	<u>Amount of Sales</u>	<u>Tax Due</u>
8/31/70	\$24,533	\$690.00
11/30/70	\$18,067	\$407.00
2/28/71	\$12,817	\$280.00
5/31/71	\$20,735	\$426.00
8/31/71	\$33,285	\$1,064.00
11/30/71	\$27,543	\$741.00

11. The amount of additional sales tax due from applicant, Waukesha Grill, after allowing for tax paid by it on account of its sales tax liabilities was \$1,938.14 for the period June 17, 1970 through November 30, 1971. By the August 4, 1972, Notice of Assessment Review the amount was revised to \$1,028.00.

12. Applicant, Joseph Canali, in support of his application for revision claimed that in order to enhance his business within the community, he had given free dinners to various organizations. He alleged that he had given a dinner and cocktail hour to the volunteer firemen of the community and their wives, a similar party to the rescue squad and that each year he entertained the local football team at the end of the season.

13. At the formal hearing the applicant also contended that a substantial amount of his food sales were under \$1.00. In winter he maintains his business attracts skiers, who buy minor items such as hamburgers, whose cost is less than \$1.00. He also cited the construction work being done near his establishment in the years in question and alleged that he had special meals for the construction workers during that period. The special meals were under \$1.00.

14. The examiner reduced food and beverage purchases by 10% to allow for owner's use, and for free meals and beverages to friends. In a seven-day analysis of guest checks done by the auditor during the week of March 24, 1971, it was determined that 99% of applicant's food sales were taxable. This percentage was reduced to 70% to allow for owner's use and for free meals.

15. The determination of additional taxable sales and resulting sales tax for the periods June 17, 1970 through November 30, 1971, were based upon substantial findings of fact in the course of a field audit of applicant, Joseph Canali d/b/a Waukesha Grill's books and records. The Sales Tax Bureau, in arriving at its determination, followed generally accepted procedures and adequate tests consistent with the nature of the business operation and available records.

16. Applicant, Waukesha Grill, has been given an opportunity to further substantiate the free meals that vendor served to the organizations mentioned above. The record has been held open for evidence which has not been forthcoming. Taking into full consideration taxpayer's testimony with respect to his sales under \$1.00, the audit fairly reflects the amount of sales tax due.

CONCLUSIONS OF LAW

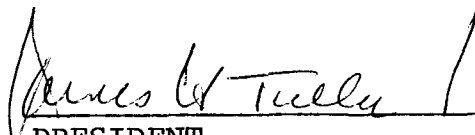
A. The examination of applicant, Joseph Canali d/b/a Waukesha Grill's books and records by the Sales Tax Bureau was properly conducted and the resulting findings as to the amount of additional sales tax due for the period June 17, 1970 through November 30, 1971, were supported by substantial evidence.

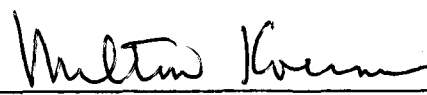
B. The application is denied and the Notice of Determination in sales tax is sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
October 9, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER