

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR D. BUCKNER

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 and 29 of the  
Tax Law for the ~~XXXX(s)~~ Period March 1,  
1971 through November 30, 1971.

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 14th day of July, 1975, she served the within  
Notice of ~~Decision for~~ Determination) by ~~(certified)~~ mail upon Seymour D. Buckner

~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Seymour D. Buckner  
15 East 48th Street  
New York, New York 10017

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

14th day of July, 1975

James S. VanPatten

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR D. BUCKNER

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

For a Redetermination of a Deficiency or  
a Refund of Sales and Use Taxes  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXXXX~~ Period March 1,  
1971 through November 30, 1971.

State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of July, 1975, she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Samuel W. Brodsky, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Samuel W. Brodsky, Esq.  
Brodsky & Ettinger  
250 West 57th Street  
New York, New York 10019  
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

14th day of July, 1975

*Jaime S. Van Patten*

*Janet Mack*



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  
**James H. Tully, Jr.**  
~~XXXXXXXXXXXXXXXXXXXX~~

A. BRUCE MANLEY  
MILTON KOERNER

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**July 14, 1975**

**Mr. Seymour D. Buckner**  
**15 East 48th Street**  
**New York, New York 10017**

**Dear Mr. Buckner:**

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,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
SEYMOUR D. BUCKNER	:	DETERMINATION
for a Hearing to Review a Determination	:	
of Sales and Use Taxes under Articles	:	
28 and 29 of the Tax Law for the period	:	
March 1, 1971 through November 30, 1971.	:	
	:	

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Seymour D. Buckner, 15 East 48th Street, New York, New York 10017, filed an application under section 1138 of the Tax Law for a hearing to review a determination of sales taxes due under Articles 28 and 29 of the Tax Law for the period March 1, 1971 through November 30, 1971.

Said determination was issued by notice dated June 14, 1974, and numbered 90,752,533 and is in the amount of \$35,111.60 plus penalty and interest of \$13,007.59 for a total of \$48,119.19.

A hearing was duly held on January 16, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York before Nigel G. Wright, Hearing Officer. The applicant was

represented by Samuel W. Brodsky, Esq. of Brodsky & Ettinger. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Alexander Weiss, Esq.

The record of said hearing has been duly examined and considered.

#### ISSUE

The issue in this case is whether Mr. Buckner, the applicant, herein, is personally liable for the sales taxes of a certain corporation under section 1133(a) of the Tax Law as a "person required to collect" the tax and under section 1131(1) of the Tax Law defining such "person required to collect" the tax as "any officer or employee of a corporation. . . who as such officer or employee is under a duty to act for such corporation in complying with any requirement [of the sales tax] . . ."

#### FINDINGS OF FACT

1. Seymour D. Buckner is, and has been since 1947, a certified public accountant. His clients are concentrated in the restaurant and related businesses. His office is presently located at 15 East 48th Street.

2. Early in 1954, Mr. Buckner sublet office space in the Empire State Building from Leon D. Miller, an attorney-at-law.

Mr. Buckner and Mr. Miller had previously been acquainted through mutual clients and both previous and subsequent to the subletting, Mr. Miller had referred clients to Mr. Buckner.

3. Around 1958, Leon Miller asked Mr. Buckner to get involved with Clubmet, Inc. of Seventh Avenue, New York City. Mr. Leon Miller represented that he had a personal investment in Clubmet of \$100,000. and asked Mr. Buckner to watch operations for him. Mr. Buckner was named as President and given three of the ten shares of stock.

4. Clubmet, Inc. did business as the Metropole Cafe located at 725 Seventh Avenue, New York City near 48th Street. It was at first a discotheque and thereafter a bar with "topless" dancers. It had live music. Clubmet, Inc. had been organized around 1952. Its original officers were Ben Harriman and a Mr. Leggio. Mr. Leggio died around 1958. The prime lessee of the premises was 725 Seventh Avenue Corporation, and Mr. Buckner had a relationship with that corporation but that is only indirectly involved herein.

5. It is conceded by the applicant herein that Clubmet, Inc. owes sales taxes for the period March 1, 1971 through November 30, 1971, in the amount of \$35,111.60 plus any appropriate interest and penalty.

6. The most active manager of Clubmet, Inc. was Ben Harriman. The night manager was Jack Goldoff. The club also had an assistant manager and bookkeeper named Jerry Siner, a woman, whose duties were to supervise about 16 dancers and to aid Mr. Harriman. Mr. Harriman paid all bills, hired and fired all employees, chose the type of entertainment and the entertainers.

7. Mr. Buckner's only duties in relation to Clubmet, Inc. were as an accountant. Mr. Buckner worked at the club one night a week from about 4:30 to 7:30. He would write up the cashbook, post the general ledger and make up any tax returns which would be coming due. He signed tax returns as a C.P.A. and not as an officer. One of his employees went in more often to write up the books and prepare the payroll which covered forty or fifty people. Mr. Buckner's charge was \$300 a month for the payroll and \$450 a month for accounting fees. He received no other compensation from Clubmet, Inc.

8. Mr. Buckner's duties included the preparation of tax returns including returns for sales taxes. These returns he delivered to Ben Harriman. However, the returns prepared by Mr. Buckner for the period here in question were never filed. Rather Clubmet filed returns prepared apparently by Mr. Harriman. Mr. Buckner was not aware of this until told so, after the period in question, by a sales tax auditor. Mr. Buckner was, however, aware that Clubmet was not

paying the sales tax as computed by himself but he had been told by Mr. Harriman and Mr. Leon Miller that Clubmet had reached an agreement with the State for installment payments and such payments were being made. He was aware that other obligations of Clubmet were not being paid currently.

9. In 1967, Mr. Buckner learned that he was a nominee not for Leon Miller but for Leon's brother, David Miller, who could not, under the rules of the State Liquor Authority, have any interest in a licensed premises. Presumably it was David Miller who invested the \$100,000 in the business. Mr. Buckner learned this in connection with a transaction whereby he was to sell his shares in the 725 Seventh Avenue Corporation to Clubmet, Inc. for \$100,000 through an escrow agent, an attorney named Edwin M. Slote. Mr. Slote turned out to be an attorney for Mr. David Miller. Mr. Buckner received in this transaction an agreement from Mr. Miller to pay any capital gains taxes which might be imposed on Mr. Buckner in the apparent sale of the shares.

10. During the period under review, Mr. Buckner signed no checks for Clubmet, Inc. Around November, 1971, Mr. Harriman left the State and he is believed to be in Florida. In December, 1971, Mr. Buckner



assumed authority to sign checks to pay certain bills. However, Mr. Buckner himself resigned as officer about a month later. Mr. Buckner is still owed \$10,000 in accounting fees. Mr. Buckner never invested his own money in Clubmet even though shares were put in his name.

11. The club ceased operations in January, 1972. In April, 1972, the premises were scheduled to be sold at auction to satisfy mortgages. The only assets of value of either Clubmet or the 725 Lexington Avenue Corporation was a ten-year lease.

CONCLUSIONS OF LAW

Mr. Buckner is not liable for the sales taxes of Clubmet, Inc. He did not have the duties on behalf of the corporation to either collect the sales tax, actually file the returns or make payments of the tax to the State.

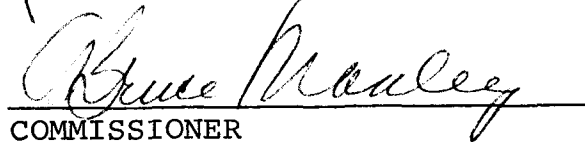
The determination under review is erroneous and is cancelled.

DATED: Albany, New York

July 14, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER