

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT J. STOKES

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~REGISTERED~~ 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 ~~XXXXXX~~ Period 9/14/72

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 8th day of October , 19 74, she served the within  
Notice of Decision (or Determination) by (~~REGISTERED~~) mail upon Robert J. Stokes

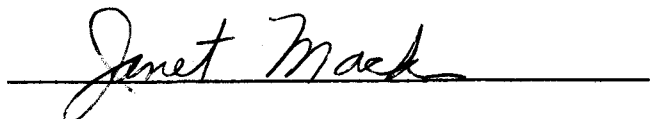
(~~XXXXXXXXXXXX~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Robert J. Stokes  
c/o Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10022  
and by depositing same enclosed in a postpaid 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~~  
~~XXX~~) 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 October , 1974







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

~~JOHN J. COUGHLIN, Acting President~~

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
October 8, 1974

Mr. Robert J. Stokes  
c/o Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10022

Dear Mr. Stokes:

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

Please take further notice that pursuant to  
Section(s) **1139 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

  
Paul B. Coburn

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	:	
ROBERT J. STOKES	:	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 September 14, 1972.	:	

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Applicant, Robert J. Stokes, has filed an application 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 September 14, 1972. A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on February 27, 1974, at 1:15 P.M. Petitioner appeared pro se. The Sales Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Was a 15% service charge separately stated on applicant, Robert J. Stokes' bill for food and beverages purchased at the Playboy Club of New York subject to New York State sales tax?

FINDINGS OF FACT

1. On September 14, 1972, applicant, Robert J. Stokes, and two friends had lunch at the Playboy Club located at 5 East 59th Street, New York City. Their total bill for food and drink came

to the sum of \$17.25. A service charge of 15% or the sum of \$2.60 was added to the sum of \$17.25 making a total sum of \$19.85. A sales tax in the sum of \$1.39 was added thereto making a total sum due of \$21.24. The amount of sales tax was arrived at by taking 7% of the sum of \$19.85. He signed a charge slip which separately stated the amount charged for food and drink, the amount of the service charge and the amount of the sales tax. He subsequently was billed for and paid the sum of \$21.24. The 15% service charge is mandatory and must be paid by the customer. The sales tax collected was subsequently paid over to New York State by the vendor.

2. The aforesaid Playboy Club is operated by Playboy Club of New York. A collective bargaining agreement between Playboy Club International, Inc. and the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO dated June 15, 1969, governed compensations of waitresses, who are distinctively dressed female employees known as "bunnies". In accordance with the terms of said agreement, the New York Playboy Club is required to and does pay compensation to a "Bunny" equal to at least 15% of the price of food and beverages and cover charges on her checks. This payment is made as part of her compensation and not as a tip or gratuity. In addition to compensation, all tips or gratuities in addition to the service charge left by a customer, are retained by her.

3. On September 19, 1972, applicant, Robert J. Stokes, filed an application for credit for refund of state and local sales or use tax in the sum of twenty cents representing the portion of the sales tax collected on the service charge of \$2.60. At the formal hearing, he reduced his claim to eighteen cents which represented 7% of \$2.60.

4. On September 28, 1972, the Sales Tax Bureau denied in full applicant, Robert J. Stokes, claim for refund.

CONCLUSIONS OF LAW

A. That the 15% service charge that was separately stated on applicant, Robert J. Stokes' bill for food and beverages by Playboy Club of New York was subject to the sales tax in accordance with the meaning and intent of section 1105(d)(i) of the Tax Law. Under said section, included in the receipts from food and drink sold by a restaurant, tavern or other establishment, are receipts from any "cover, minimum, entertainment or other charges made to patrons or customers". The aforesaid service charge was such an "other charge" and not a tip. It could not be considered a tip, even though all of the proceeds of said service charge went to the waitress, because it was not gratuitous.

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B. That the application of Robert J. Stokes is denied.

DATED: Albany, New York

October 8, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER