

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

2620 WEST HENRIETTA LANES

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period 9/1/67-:
8/15/70.

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

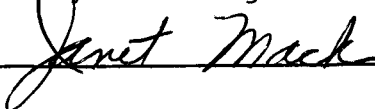
State of New York
County of Albany

Martha Funaro, 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 21st day of August, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon 2620 West Henrietta
Lanes, c/o Arthur D. (representative of) the petitioner in the within
Weller
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: 2620 West Henrietta Lanes
c/o Arthur D. Weller
1190 Brooks Avenue
Rochester, 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 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

21st day of August, 1974.





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State of New York
County of Albany

Martha Funaro , 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 21st day of August , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Stephen P. Morris, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Stephen P. Morris, Esq.
315 Powers Building
Rochester, 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
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known address of the (representative of the) petitioner.

Sworn to before me this

21st day of August , 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York
August 21, 1974

**2620 West Henrietta Lanes
c/o Arthur D. Weller
1190 Brooks Avenue
Rochester, 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.

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

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
2620 WEST HENRIETTA LANES	:	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 9/1/67 - 8/15/70.	:	

Applicant, 2620 West Henrietta Lanes, 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 of September 1, 1967 to August 15, 1970. (Notice No. 90,451,446). A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 1 Marine Midland Plaza, Rochester, New York, on September 19, 1973, at 3:00 P.M. The applicant appeared by Stephen P. Morris, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUES

I. Were bowling lanes taxable as personal property or real property?

II. What was the actual sales price of the aforesaid bowling lanes?

FINDINGS OF FACT

1. Applicant, 2620 West Henrietta Lanes, Inc. filed New York State sales and use tax returns for the period September 1, 1967 to August 15, 1970.

2. A Notice of Determination of sales and use taxes (and penalties) for the period September 1, 1967 to August 15, 1970, was issued on December 16, 1970, under Notice No. 90,451,446.

3. The applicant applied for a revision of the determination of the deficiencies in sales tax.

4. On August 15, 1970, property was transferred by 2620 West Henrietta Lanes, Inc. to Tri-R-Lanes, Inc., which consisted of a building used for bowling. The building housed 24 bowling lanes and additional equipment necessary for maintaining and using said lanes. The lanes could be taken out of the building and moved to another location for further use.

5. In a field audit report, applicant, 2620 West Henrietta Lanes, Inc., was taxed on the sale of the bowling alleys as being personal property and not real property, as applicant had claimed. The sales tax examiner calculated the amount of tax by equating the ratio of the book value of the lanes to the book value of the total real property with the ratio of the sales prices of the respective properties. The sales price of the bowling lanes as computed by the foregoing method was \$60,060.00. This value compared with applicant's testimony of \$50,000.00.

CONCLUSIONS OF LAW

A. That the bowling lanes in question were personal property and not part of realty for tax purposes. Matter of Bronxville Bowling, Inc. v. Schmeidel, 289 N.Y. 666 (1942).

B. The field audit reasonably determined the sales price of the aforesaid lines to be \$60,060.00 and this determination was proper.

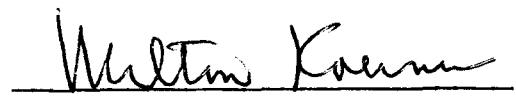
C. That the application of 2620 West Henrietta Lanes is denied and the Notice of Determination issued on December 16, 1970, is sustained.

DATED: Albany, New York
August 21, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER