

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MILTON MILLER, Officer of SCHENCK'S
RESORT OPERATING CORP.

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

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 June 1, 1966
through August 31, 1966.

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 12th day of September , 1974, she served the within
Notice of Decision (or Determination) by ~~(certified)~~ mail upon Milton Miller

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Milton Miller
c/o Carl J. Silverstein, Esq.
250 Broadway, Box 552
Monticello, New York 12701

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

12th day of September , 1974.

Janet Mock

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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Notice of Decision (or Determination) by (certified) mail upon Carl J. Silverstein
Esq.

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Monticello, New York 12701

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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

September 12, 1974

**Mr. Milton Miller
c/o Carl J. Silverstein, Esq.
230 Broadway, Box 552
Monticello, New York 12701**

Dear Mr. Miller:

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,

Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MILTON MILLER, Officer of	:	
SCHENCK'S RESORT OPERATING CORP.	:	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 1, 1966 through	:	
August 31, 1966.	:	

Applicant, Milton Miller, 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 June 1, 1966 through August 31, 1966. (File No. 90601935A). A formal hearing was held before Lawrence A. Newman, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 16, 1971, at 1:00 P.M. Applicant appeared by Carl J. Silverstein, Esq. The Sales Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Is applicant, Milton Miller, personally liable, as an officer of Schenck's Resort Operating Corp., during the period June 1, 1966 through August 31, 1966, for sales taxes due from the aforesaid corporation?

FINDINGS OF FACT

1. Schenck's Resort Operating Corp. failed to pay over to the Sales Tax Bureau sales taxes obtained from operations of Schenck's Paramount Hotel for the period from June 1, 1966 through August 31, 1966, in the sum of \$7,887.60.

2. On September 18, 1969, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against applicant, Milton Miller, equal to the amount of New York State sales tax due

from Schenck's Resort Operating Corp. for the period June 1, 1966 through August 31, 1966, upon the grounds that he was a person required to collect, truthfully account for, and pay over said taxes and that he failed to do so.

3. Applicant, Milton Miller, became vice president of Schenck's Resort Operating Corp. in early April, 1966. He was appointed to that position by Mr. Bracconeri and Mr. Rotello, who were owners of the Schenck's Hotel, so that he could sign checks. He owned no stock in the corporation.

4. Mr. Bracconeri and Mr. Rotello went to jail soon thereafter and their wives directed the activities of Schenck's Hotel.

5. For the period in question, June 1, 1966 through August 31, 1966, applicant, Milton Miller, signed checks for Schenck's Hotel. Applicant did not order food or liquor for the hotel. He never had the authority to determine whether a check should or should not be paid or whether a bill was excessive. He did not have the authority to pay any bills by cash, nor did he ever prepare the bank statements or make the deposits. Applicant had nothing to do with the bookkeeping. Applicant had no financial authority or responsibility other than put his signature on checks.

6. Mrs. Bracconeri and Mrs. Rotello handled all financial matters, not only in the hotel, but with local merchants and the local bank.

CONCLUSIONS OF LAW

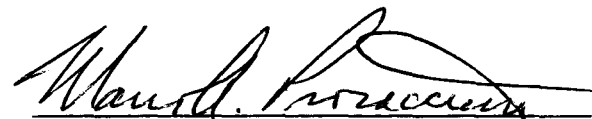
A. That applicant, Milton Miller, as vice president of Schenck's Resort Operating Corp., was not a person required to collect, truthfully account for, and pay over New York State sales tax due from said corporation for the period June 1, 1966 through August 31, 1966, in accordance with the meaning and intent of section 1131 of the Tax Law since he acted only in a subordinate capacity, had no voice in the financial matters of the hotel and had no authority to determine which creditors or taxes should be paid.

B. That since applicant, Milton Miller, was not a person required to collect, truthfully account for, and pay over New York State sales tax due from Schenck's Resort Operating Corp., for the period June 1, 1966 through August 31, 1966, therefore, a Notice and Demand for Payment Due, equal to the amount withheld by the corporation was improperly assessed against him in accordance with the meaning and intent of section 1133 of the Tax Law.


C. That the application of Milton Miller is granted and the Notice and Demand for Payment of Sales and Use Taxes Due issued September 18, 1969, against him is cancelled.

DATED: Albany, New York
September 12, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER