

STATE OF NEW YORK
STATE TAX COMMISSION

Application

In the Matter of the ~~Petition~~

of

LIBERTY BAR & RESTAURANT, INC.

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)~~ Periods December 1,
1967 through November 30, 1970.

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 9th day of October , 1974, she served the within
Notice of Decision (or Determination) by ~~certified~~ mail upon Liberty Bar &
Restaurant, Inc. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Liberty Bar & Restaurant, Inc.
143-08 Liberty Avenue
Jamaica, 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

9th day of October , 1974

Martha Funaro

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

Application

In the Matter of the ~~Refund~~

of

LIBERTY BAR & RESTAURANT, INC.

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)~~ Periods December 1,
1967 through November 30, 1970.

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 9th day of October , 1974, she served the within
Notice of Decision (or Determination) by (~~certified~~) mail upon Stanley Sinowitz, Esq.
Wolff & Hass, Esqs. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Stanley Sinowitz, Esq.
Wolff & Hass, Esqs.
89-15 Parsons Blvd.
Jamaica, New York 11432
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

9th day of October , 1974.

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

Application

In the Matter of the ~~Petitioner~~

of

LIBERTY BAR & RESTAURANT, INC.

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)~~ Periods December 1,
1967 through November 30, 1970.

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 9th day of October , 1974 , she served the within
Notice of Decision (or Determination) by (~~certified~~) mail upon Bernard Solomon,
C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Bernard Solomon, C.P.A.

115 South Corona Avenue
Valley Stream, New York 11580

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

9th day of October , 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

October 9, 1974

Liberty Bar & Restaurant, Inc.
143-08 Liberty Avenue
Jamaica, 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,


Paul S. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227



Return in mail Liberty Bar

Liberty Bar & Restaurant, Inc.

143-08 Liberty Avenue

Jamaica, New York

Att.

Paul B. Quinn

Bldg # 9

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|--|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| LIBERTY BAR & RESTAURANT, INC. | : | 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 Periods December 1, 1967 through | : | |
| November 30, 1970. | : | |

Applicant, Liberty Bar & Restaurant, Inc., 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 periods December 1, 1967 through November 30, 1970. (File No. 11-1727231). 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 February 16, 1972, at 9:15 A.M. Applicant appeared by Wolff & Hass, Esqs., (Stanley Sinowitz, Esq., of counsel). The Sales Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Was additional sales tax due from applicant, Liberty Bar & Restaurant, Inc., for the periods December 1, 1967 through November 30, 1970?

FINDINGS OF FACT

1. Applicant, Liberty Bar & Restaurant, Inc., filed New York State and local sales and use tax returns for the periods

December 1, 1967 through November 30, 1970.

2. On February 2, 1971, applicant, Liberty Bar & Restaurant, Inc., consented to extending the period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law through December 20, 1971.

3. On July 19, 1971, as a result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Liberty Bar & Restaurant, Inc., for additional sales tax due for the periods December 1, 1967 through November 30, 1970 in the sum of \$5,150.44 plus penalty and/or interest of \$1,380.51.

4. Applicant, Liberty Bar & Restaurant, Inc., operated a restaurant and bar at 143-08 Liberty Avenue in Jamaica, New York during the periods December 1, 1967 through November 30, 1970.

5. Applicant, Liberty Bar & Restaurant, Inc.'s markup on purchases relating to the sale of wine and liquor was 250% during the periods December 1, 1967 through November 30, 1970.

6. Applicant, Liberty Bar & Restaurant, Inc.'s markup on purchases relating to the sale of beer was 163% during the periods December 1, 1967 through November 30, 1970.

7. Applicant, Liberty Bar & Restaurant, Inc.'s markup on purchases relating to the sale of food was 125% during the periods December 1, 1967 through November 30, 1970.

8. The effective tax rate applicable to applicant, Liberty Bar & Restaurant, Inc.'s sales of food and beverages was 5.06% during the periods December 1, 1967 through November 30, 1970.

9. Applicant, Liberty Bar & Restaurant, Inc.'s sales, as determined by applying the aforesaid markups to purchases and sales tax due, as determined by applying the aforesaid effective rate to sales, for the periods December 1, 1967 through November 30, 1970 were as follows:

| <u>Period Ended</u> | <u>Amount of Sales</u> | <u>Sales Tax Due</u> |
|---------------------|------------------------|----------------------|
| 2/29/68 | \$11,804.00 | \$390.30 |
| 5/31/68 | 14,107.00 | 463.85 |
| 8/31/68 | 12,090.00 | 399.75 |
| 11/30/68 | 10,384.00 | 342.95 |
| 2/28/69 | 10,984.00 | 363.00 |
| 5/31/69 | 12,043.00 | 451.18 |
| 8/31/69 | 11,085.00 | 439.92 |
| 11/30/69 | 10,771.00 | 425.99 |
| 2/28/70 | 11,024.00 | 437.22 |
| 5/31/70 | 11,239.00 | 446.10 |
| 8/31/70 | 12,794.00 | 505.56 |
| 11/30/70 | 12,207.00 | 484.62 |

10. The amount of additional sales tax due from applicant, Liberty Bar & Restaurant, Inc., after allowing for sales tax paid by it on account of its sales tax liabilities was \$4,941.31 for the periods December 1, 1967 through November 30, 1970.

11. The determination of additional taxable sales and resulting sales tax for the periods December 1, 1967 through November 30, 1970 were based upon substantial findings of fact in the course of a field audit of applicant, Liberty Bar & Restaurant, Inc.'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 operations and available records. Applicant, Liberty Bar & Restaurant, Inc., has failed to submit documentary or other sufficient evidence to disprove the Sales Tax Bureau's determination of taxable sales or the computation of sales tax due.

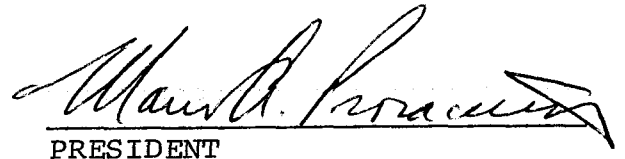
CONCLUSIONS OF LAW

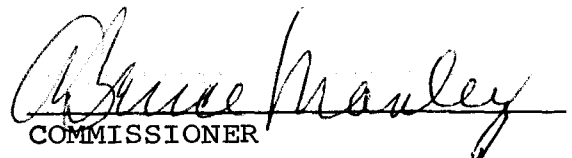
A. That the examination of applicant, Liberty Bar & Restaurant, Inc.'s books and records by the Sales Tax Bureau was properly conducted and the resulting findings as to the amount of additional sales tax due for the periods December 1, 1967 through November 30, 1970 were supported by substantial evidence.

B. That the application of Liberty Bar & Restaurant, Inc. is denied and the Notice of Determination and Demand issued July 19, 1971 is sustained.

DATED: Albany, New York
October 9, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
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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

October 9, 1974

Liberty Bar & Restaurant, Inc.
143-08 Liberty Avenue
Jamaica, New York

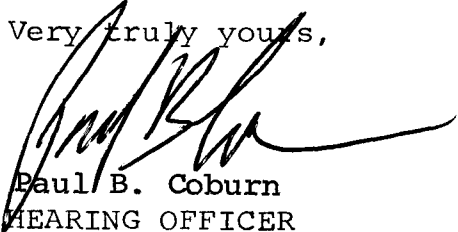
Gentlemen:

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,


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 :
LIBERTY BAR & RESTAURANT, INC. : 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 Periods December 1, 1967 through :
November 30, 1970. :

Applicant, Liberty Bar & Restaurant, Inc., 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 periods December 1, 1967 through November 30, 1970. (File No. 11-1727231). 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 February 16, 1972, at 9:15 A.M. Applicant appeared by Wolff & Bass, Esqs., (Stanley Sinowitz, Esq., of counsel). The Sales Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Was additional sales tax due from applicant, Liberty Bar & Restaurant, Inc., for the periods December 1, 1967 through November 30, 1970?

FINDINGS OF FACT

1. Applicant, Liberty Bar & Restaurant, Inc., filed New York State and local sales and use tax returns for the periods

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application

of

LIBERTY BAR & RESTAURANT, INC.
DETERMINATION

for revision of a Determination of the
Refund of Sales and Use Taxes under
Articles 28 and 29 of the Tax Law for
the periods December 1, 1967 through
November 30, 1970.

Applicant, Liberty Bar & Restaurant, Inc., has filed an
application for revision of a determination of the refund of
sales and use taxes under Articles 28 and 29 of the Tax Law for
the periods December 1, 1967 through November 30, 1970. (File
No. 11-172-231). 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 February 18, 1972, at
9:15 A.M. Applicant appeared by John E. Hase, Esq.,
(Stanley S. Hase, Esq., of counsel). The State Tax Bureau was
represented by Edward W. Hase, Esq., (Solomon Hase, Esq., of counsel).

ISSUE

Was additional sales tax due from applicant, Liberty Bar
& Restaurant, Inc., for the periods December 1, 1967 through
November 30, 1970?

FINDINGS OF FACT

1. Applicant, Liberty Bar & Restaurant, Inc., filed New
York State and local sales and use tax returns for the periods

December 1, 1967 through November 30, 1970.

2. On February 2, 1971, applicant, Liberty Bar & Restaurant, Inc., consented to extending the period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law through December 20, 1971.

3. On July 19, 1971, as a result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Liberty Bar & Restaurant, Inc., for additional sales tax due for the periods December 1, 1967 through November 30, 1970 in the sum of \$5,150.44 plus penalty and/or interest of \$1,380.51.

4. Applicant, Liberty Bar & Restaurant, Inc., operated a restaurant and bar at 143-08 Liberty Avenue in Jamaica, New York during the periods December 1, 1967 through November 30, 1970.

5. Applicant, Liberty Bar & Restaurant, Inc.'s markup on purchases relating to the sale of wine and liquor was 250% during the periods December 1, 1967 through November 30, 1970.

6. Applicant, Liberty Bar & Restaurant, Inc.'s markup on purchases relating to the sale of beer was 863% during the periods December 1, 1967 through November 30, 1970.

7. Applicant, Liberty Bar & Restaurant, Inc.'s markup on purchases relating to the sale of food was 125% during the periods December 1, 1967 through November 30, 1970.

8. The effective tax rate applicable to applicant, Liberty Bar & Restaurant, Inc.'s sales of food and beverages was 5.06% during the periods December 1, 1967 through November 30, 1970.

December 1, 1967 through November 30, 1970.

2. On January 2, 1971, Applicant, Liberty Bar & Restaurant,

Inc., consented to extending the period of limitation for assess-

ment of sales and use taxes under Articles 28 and 29 of the Tax

Law through December 30, 1971.

3. On May 19, 1971, as a result of a field audit, the

State Tax Bureau issued a Notice of Determination and Demand

against Applicant, Liberty Bar & Restaurant, Inc., for additional

sales tax due for the periods December 1, 1967 through November 30,

1970 in the sum of \$2,150.44 plus penalty and/or interest of

\$1,360.11.

4. Applicant, Liberty Bar & Restaurant, Inc., operated a

restaurant and bar at 143-08 Liberty Avenue in Jamaica, New York

during the periods December 1, 1967 through November 30, 1970.

5. Applicant, Liberty Bar & Restaurant, Inc., a markup on

purchases relating to the sale of wine and liquor was 28% during

the periods December 1, 1967 through November 30, 1970.

6. Applicant, Liberty Bar & Restaurant, Inc., a markup on

purchases relating to the sale of food was 16% during the periods

December 1, 1967 through November 30, 1970.

7. Applicant, Liberty Bar & Restaurant, Inc., a markup on

purchases relating to the sale of food was 12% during the periods

December 1, 1967 through November 30, 1970.

8. The selective tax rate applicable to Applicant, Liberty

Bar & Restaurant, Inc.'s sales of food and beverages was 7.00%

during the periods December 1, 1967 through November 30, 1970.

9. Applicant, Liberty Bar & Restaurant, Inc.'s sales, as determined by applying the aforesaid markups to purchases and sales tax due, as determined by applying the aforesaid effective rate to sales, for the periods December 1, 1967 through November 30, 1970 were as follows:

| <u>Period Ended</u> | <u>Amount of Sales</u> | <u>Sales Tax Due</u> |
|---------------------|------------------------|----------------------|
| 2/29/68 | \$11,804.00 | \$390.30 |
| 5/31/68 | 14,107.00 | 463.85 |
| 8/31/68 | 12,090.00 | 399.75 |
| 11/30/68 | 10,384.00 | 342.95 |
| 2/28/69 | 10,984.00 | 368.00 |
| 5/31/69 | 12,043.00 | 451.18 |
| 8/31/69 | 11,085.00 | 439.92 |
| 11/30/69 | 10,771.00 | 425.99 |
| 2/28/70 | 11,024.00 | 437.22 |
| 5/31/70 | 11,239.00 | 446.10 |
| 8/31/70 | 12,794.00 | 505.58 |
| 11/30/70 | 12,207.00 | 484.62 |

10. The amount of additional sales tax due from applicant, Liberty Bar & Restaurant, Inc., after allowing for sales tax paid by it on account of its sales tax liabilities was \$4,941.31 for the periods December 1, 1967 through November 30, 1970.

11. The determination of additional taxable sales and resulting sales tax for the periods December 1, 1967 through November 30, 1970 were based upon substantial findings of fact in the course of a field audit of applicant, Liberty Bar & Restaurant, Inc.'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 operations and available records. Applicant, Liberty Bar & Restaurant, Inc., has failed to submit documentary or other sufficient evidence to disprove the Sales Tax Bureau's determination of taxable sales or the computation of sales tax due.

or the computation of sales tax due.

disapprove the sales tax Bureau's determination of taxable sales failed to submit documentary or other sufficient evidence to

available records. Applicant, Liberty Bar & Restaurant, Inc., has made consistent with the nature of the business operations and

determination, followed generally accepted procedures and adequate books and records. The sales tax Bureau, in arriving at its

of a field audit of applicant, Liberty Bar & Restaurant, Inc., 1970 were based upon substantial findings of fact in the course

sales tax for the period December 1, 1967 through November 30, 1970. The determination of additional taxable sales and resulting

the period December 1, 1967 through November 30, 1970. by it on account of its sales tax liability was \$4,941.31 for

Liberty Bar & Restaurant, Inc., after allowing for sales tax paid 10. The amount of additional sales tax due from applicant,

| Period ended | Amount of sales | Sales tax due |
|--------------|-----------------|---------------|
| 11/30/70 | 12,207.00 | 484.62 |
| 8/31/70 | 12,724.00 | 502.88 |
| 5/31/70 | 11,232.00 | 446.16 |
| 2/28/70 | 11,024.00 | 437.32 |
| 11/30/69 | 10,771.00 | 423.92 |
| 8/31/69 | 11,002.00 | 432.92 |
| 5/31/69 | 12,042.00 | 451.18 |
| 2/28/69 | 10,924.00 | 398.00 |
| 11/30/68 | 10,304.00 | 342.92 |
| 8/31/68 | 12,000.00 | 399.72 |
| 5/31/68 | 14,107.00 | 483.82 |
| 2/28/68 | 11,804.00 | 430.30 |

1970 were as follows:

rate to sales, for the period December 1, 1967 through November 30, sales tax due, as determined by applying the aforesaid effective determined by applying the aforesaid markup to purchases and 2. Applicant, Liberty Bar & Restaurant, Inc.'s sales, as


CONCLUSIONS OF LAW

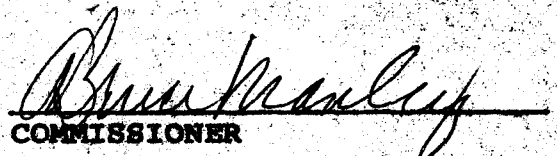
A. That the examination of applicant, Liberty Bar & Restaurant, Inc.'s books and records by the Sales Tax Bureau was properly conducted and the resulting findings as to the amount of additional sales tax due for the periods December 1, 1967 through November 30, 1970 were supported by substantial evidence.

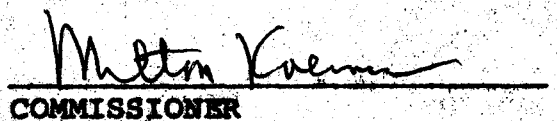
B. That the application of Liberty Bar & Restaurant, Inc. is denied and the Notice of Determination and Demand issued July 19, 1971 is sustained.

DATED: Albany, New York
October 9, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

COMPUTATION OF TAX

A. That the examination of the books and records of the taxpayer for the year 1970 was completed on November 10, 1970.

The books and records of the taxpayer for the year 1970 were examined and the results of the examination are as follows:

1. The taxpayer's gross sales for the year 1970 were \$100,000.00.

2. The taxpayer's cost of goods sold for the year 1970 was \$60,000.00.

3. The taxpayer's gross profit for the year 1970 was \$40,000.00.

4. The taxpayer's net income for the year 1970 was \$20,000.00.

5. The taxpayer's taxable income for the year 1970 was \$20,000.00.

6. The taxpayer's tax liability for the year 1970 was \$4,000.00.

STATE TAX COMMISSION

ALBANY, NEW YORK

OCTOBER 1, 1971

PRESIDENT

COMMISSIONER

COMMISSIONER