Application

In the Matter of the Betxkion

of

LIBERTY BAR & RESTAURANT, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (GENTIFIED) 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 \*\*Y\*\*\*\*/\*\*\*/\*\* Periods December 1,
1967 through November 30, 1970.

State of New York County of Albany

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

Smarthe Dunero

STATE OF NEW YORK STATE TAX COMMISSION

Application

In the Matter of the Perixxon

of

LIBERTY BAR & RESTAURANT, INC.

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERPTELED) 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 Ye/a//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 (cexkidizi) 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.

mastha Dunas

Sworn to before me this

9th day of October , 1974.

Janet mack

STATE OF NEW YORK STATE TAX COMMISSION

Application

In the Matter of the Petities

of

LIBERTY BAR & RESTAURANT, INC.

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CRREFERE) 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 ////////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 (AMARTRING) 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



STATE TAX COMMISSION

A. BRUCE MANLEY

MILTON KOERNER

MARIO A. PROCACCINO, PRESIDENT

# STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

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

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

AREA CODE 518

Albany, New York

October 9. 1974

EARING OFFICER

Liberty Mer & Mestaurent, Inc. 143-08 Liberty Avenue Jamaica, New York

# Contlemen:

Please take notice of the office 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 decision 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.

Enc.

Petitioner's Representative

Law Bureau

~ mm 7 Liberty Bar & Restaurant, Inc. 143-08 Liberty Avenue Jamaica, New York Frul B. Calura DUG # 9 Department of Taxation and Finance STATE OF NEW YORK ALBANY, N. Y. 12227 STATE CAMPUS

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## 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:

Period Ended	Amount of Sales	Sales Tax Due
2/29/68	\$11,804.00	\$390.30
5/31/68	14,107.00	463.85
8/31/68	12,090.00	<b>3</b> 99 <b>.</b> 75
11/30/68	10,384.00	34 <b>2.</b> 95
2/28/69	10,984.00	36 <b>3.</b> 00
5/31/69	12,043.00	451.18
8/31/69	11,085.00	439.92
11/30/69	10,771.00	4 <b>2</b> 5.99
2/28/70	11,024.00	437.22
5/ <b>31</b> /70	11,239.00	446.10
8/31/70	12,794.00	505 <b>.</b> 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

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COMMISSIONER

COMMISSIONER



STATE TAX COMMISSION

A. BRUCE MANLEY

MILTON KOERNER

MARIO A. PROCACCINO, PRESIDENT

# STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION HEARING UNIT

> EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

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

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

AREA CODE 518

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 decision 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
MEARING OFFICER

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Petitioner's Representative Law Bureau

AD-1.12 (8/73)

Enc.

## STATE TAX COMMISSION

In the Matter of the Application

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LIBERTY BAR & RESTAURANT, INC.

DEPERMINATION

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.

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## 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

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In the Matter of the Application

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KISERTY JAR & RESTRURANT, INC. . DEFEINITATION

for Revision of a Determination of for Refund of Sales and Use Taxes agier Articles 20 and 20 of the Tax Naw for the Periods December 1, 1967 through November 30, 1970.

Applicant, Diberty Day & Restaurant, Ind., has filed an application for revision of a determination of for refund of sales and use taxes under Articles 28 and 70 of the Tax Lay for the pariods Dedember 1, 1967 through payenter, 30, 1970. (file, No. 11-172/231). A formal beauty, was yeld hefore Laurence A. Nawman, Hearing Difficer, at the offices of the State Tax Commission. So Cantre Street, New York, N. Work, on Debruary 16, 1972, at 9715 A.M. Applicant appeared, why Work, on Debruary 16, 1972, at

(Stanley Sinowitz, Med., of counsel). The spier Tax Burred on a squared by sq

#### FARM

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# FINDLINGS OF FACT

1. Applicant, Liberty Seric Restaurant, Inc., filled New York State and Incel rales and was 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 Tex 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; Eiberty 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 \$63% 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.

Desember 1, 1967 through November 20, 1970.

- 2. On sairrary 2, 1971, applicant, liberty Bar & Restaurant, Inc., consonted to extending the pariod of limitation for assessment of sairs and use cares under Extinis 28 and 29 of the Tax Law through recember 20, 1971.
- 3. On July 19, 1371, as a result of a field audit, the cales was evened a Notice of Determination and Demand against applicant; hibarty Ber a Rostaurant, Inc., for additional sales tax due for the periods December 1, USCY through Movember 30, 1870 in the sum of \$1.150.44 plus penalty and/or interest of \$1.350.51.
  - 4. Applicant, Liberty Mar, & Mesteurant, inci, eperated a restaurant and large at 43-08 inherty irrashing the remarks for fork during the particle December 1, 1267 through November 31, 1270.
  - 5. Applicant, Liberty Day & Reshmurant, Ito. 's waring on purchases relation to the sale of wine and liquer was 250% during the particle tecesher 1. 1967 through November 30, 1970.
- 6. Appliesnt, Siberty Far & Restaurant, 140. s markur ou purchases relating to the sale of 1 or was 163% during the perioda necember 1, 1967 chrough November 30, 1970.
- 7. Applicant, Liberty Bor & Restaurant, Inc.'s marker on spurchases relating to the sale of cood was 125% during the partods December 1. 1967 through Equator 10. 1970.
  - 8. The effective tax rate applicable to applicant, Liberty Bar & Restrucant, Inc. to cales of food and beverages was 1.56% during the particle December 1, 1869 through Movember 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 Sovember 39, 1970 were as follows:

Period Ended	1-	mount of	Sales .	341	a Tax Dec
2/29/68		\$11,804.			390,30
5/31/68 8/31/68		14,107. 12,090.	THE STATE OF THE S		463.85 %
11/30/68		10,384.	医囊肿 医二氏征 医乳腺病 医二甲酚		342.95
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5/31/69 8/31/69		12,043. 11,085.			451.18 439.92
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2/28/70		11,024.			437,22
5/31/70		11,239.			446.10
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- 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., bas 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.

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9800 <b>68</b>	\$11,804.00	2/25/66
463.85	14.107.00	5/31/68
399.75	12,000.00	. 80 1 <b>6*</b> h
342,95		11/30/58
36€00	10,934.00	2/20/69
4.7.18	12,043.60	9/31/69
439.92	11.035.00	8/31/59
423.99	10,771.00	£9/0E/II
437.32	11,00,400	2/28 20
446.16	11,239,00	5/31/70
503.66	12.734.00	8/31/70
484,62	12.207.00	0./05/11

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# CONCLUSIONS OF LAW

- A. That the examination of applicant, Diberty 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

# ART AT MOTAL FOROS

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> ther the application of this rly far & Sactacion. Inc. to denied and the motion of noternimation and Domand issist .benistana at 1701 tel vint.

> > LIRY ID: Albany, Mew York Prel , Chesoton

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