

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

890 NOSTRAND AVE., INC.  
t/a "On the Avenue with Bill"  
and Myrtle Bowman, President  
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 ~~xxxxx~~ Period August 1,  
1965 through February 28, 1968.

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

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 21st day of August, 19 74, she served the within  
Notice of Decision (or Determination) by (certified) mail upon 890 NOSTRAND  
RESTAURANT, INC.  
t/a "On the Avenue with (representative of) the petitioner in the within  
Bill"  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
890 Nostrand Restaurant, Inc.  
wrapper addressed as follows: t/a "On the Avenue with Bill"  
890 Nostrand Avenue  
Brooklyn, 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, 19 74

Martha Durazo

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
890 NOSTRAND AVE., INC.  
t/a "On the Avenue with Bill"  
and Myrtle Bowman, President

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) 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 ~~Year(s)~~ Period August: 1,  
1965 through February 28, 1968.

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 21st day of August, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon MYRTLE BOWMAN

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

Miss Myrtle Bowman  
2333 Fifth Avenue  
New York, 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

Donald H. Jones

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
890 NOSTRAND AVE., INC.  
t/a "On the Avenue with Bill"  
and Myrtle Bowman, President

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) 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 ~~Year(s)~~ Period August 1,  
1965 through February 28, 1968.

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 21st day of August, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon SIDNEY MEYERS, ESQ.

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

Sidney Meyers, Esq.  
51 Chambers Street  
New York, New York 10007

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

Barbara J. Dunne

Janet Mack



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

890 Nostrand Restaurant, Inc.  
t/a "On the Avenue with Bill"  
890 Nostrand Avenue  
Brooklyn, 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 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,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)



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  
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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  
**August 21, 1974**

**Miss Myrtle Bowman**  
**2333 Fifth Avenue**  
**New York, New York**

**Dear Miss Bowman:**

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

Please take further notice that pursuant to  
Section(s) **1138 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,

**Nigel G. Wright**  
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	:	
890 NOSTRAND AVE., INC.	:	
t/a "On the Avenue with Bill"	:	
and Myrtle Bowman, President	:	DETERMINATION
for a Hearing to Review a Determination	:	
or for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax Law	:	
for the Period August 1, 1965 through	:	
February 28, 1968.	:	

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890 Nostrand Ave., Inc., t/a "On the Avenue with Bill" and Myrtle Bowman, its president, filed an application under section 1138 and 1250 of the Tax Law to review a determination issued on April 1, 1969, and amended on August 29, 1969, in the amount of \$4,545.98 plus penalty of 5% and interest at 1% per month of \$1,575.66 for a total of \$6,061.64 for sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through February 28, 1968.

A hearing was duly held on September 13, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant was represented by Sidney Meyers, Esq. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

Whether the purchase markup audit of applicant's bar and grill records, based on a test period was properly conducted, and whether the resulting additional sales taxes were computed correctly.

FINDINGS OF FACTS

1. The applicant is a bar located in Brooklyn, New York, Its stock is owned by Myrtle Bowman and Alfred Faison who had purchased it in 1965. It had between six and eight employees including one manager,

two bartenders and some barmaids who served tables. Its hours were 10:00 A.M. to 3:00 A.M. and generally only one bartender worked at one time. One of the owners, Miss Bowman, would visit the bar for two or three hours each day after the hours of her own regular employment. She keeps the books of the business. The other owner would spend most of the evening at the bar after the hours of his own regular employment. Its prices are posted. Drinks served at tables would be paid for with each round. Table receipts were not used. The barmaids would usually give the money to the bartender who would ring it up on the cash register. It did not sell food. It sold beer at \$.15 a glass and \$.50 a bottle. Its liquor ranged from \$.55 for Four Roses to \$1.00 for Harvey Bristol Cream.

2. Applicant filed timely sales tax returns. These showed taxable sales to be the same as gross sales.

3. Applicant concedes that its sales tax returns for the audit period were incorrect to the extent of not reporting sales of \$4,365.58. This figure is derived from its own books. The total sales for this period were around \$192,000.00.

4. The applicant produced its books and records which, from appearances, were in good order. Cash register tapes were not produced.

5. The audit increased the gross sales stated on the returns by 36.96%. These increased sales were then multiplied by an "effective rate" of 5.5% for the period August 1, 1965 through August 31, 1967, and 5% for the period September 1, 1968 through February 28, 1968.

6. The audit had been done as follows:

(a) Purchases of liquor for October 1967 were listed. The number of drinks was then computed by assuming one ounce drinks and 27 drinks per quart bottle (32 ounces). No allowance was made for opening and closing inventory. The posted price per drink was then broken down into a base price and a tax component. These components were multiplied by the number of drinks to arrive at gross sales and sales tax due.

The figure thus computed for gross sales was 208.6% higher than the gross sales reported on applicant's returns. The figure thus computed for sales tax due was 5.7% of the computed gross sales figure. This was reduced by a 40% allowance for "multiple drinks" to 5.42%.

(b) The purchases of beer for October 1967 were listed. There were eleven such purchases. The number of drinks from purchases of a single 1/2 keg was computed by assuming seven ounce glasses and 15% spillage.

The number of sales from the bottled beer was computed simply by adding bottles with no allowance for waste. No allowance was made for opening and closing inventory. The posted prices of \$.50 for bottles and \$.15 for glasses was broken down into a base price and a tax component. These components were multiplied by the number of drinks to arrive at gross sales and sales tax due.

The figure thus computed for gross sales was 191.4% higher than the gross sales reported on applicant's returns. The figure thus computed for sales tax due was 6.4% of the computed gross sales figure. This was reduced by a 40% allowance for multiple drinks to 5.84%.

(c) The figures for the October 1967 test period were projected over the entire audit period. Total beer purchases were increased by 191.4% and a tax due computed at an effective rate of 5.84%. Total liquor purchases were first adjusted for an estimated closing inventory and then increased by 208.6% and a tax due therein computed at an effective rate of 5.42%. The receipts from liquor sales were found to be over four times as great as from beer sales. The total sales of both beer and liquor were found to be 36.96% higher than such total sales shown on the returns.

A tax due was then also computed separately for beer (at a 5.84% effective rate) and for liquor (at a 5.42% effective rate). These were aggregated and found to be 5.5% of the computed total sales of beer and liquor.

7. The Federal tax returns had shown the cost of goods sold to be 77.8% of sales in 1965, 42.4% of sales in 1966 and 45.1% of sales in 1967. The opening inventory in 1965 was shown to be none. The closing inventory in 1967 was shown to be \$4,386.97. In 1965, the returns showed a very small profit and 1966 and 1967 showed very small losses.

8. The applicant, 890 Nostrand Ave., Inc., failed to prove that the month selected for audit, October 1967, did not properly reflect an average month of operation and not a valid basis for projecting sales.



9. The applicant, 890 Nostrand Ave., Inc., has failed to submit documentary or other sufficient evidence to disprove the Sales Tax Bureau's determination of taxable sales on the computation of sales tax due.

10. On April 1, 1969, as a result of the field audit, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, 890 Nostrand Ave., Inc., for additional sales tax due for the period August 1, 1965 through February 28, 1968, in the sum of \$4,509.96 plus penalty and/or interest of \$1,506.69.

CONCLUSION OF LAW

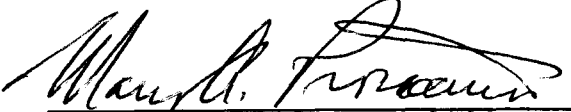
The applicant's returns were not correctly computed and the determination under review must be upheld. It was, therefore, necessary for the Sales Tax Bureau to estimate the tax from purchases under section 1138 of the Tax Law.

DETERMINATION

The determination under review is correct and is sustained with such further interest as provided under section 1145(a) of the Tax Law.

DATED: Albany, New York  
August 21, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER