

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TOWN SHANTY

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period(s)
8/1/65 - 11/30/67

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

State of New York
County of Albany

Lynn Wilson , 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 27th day of February , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon TOWN SHANTY

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Town Shanty
2400 Clinton Street
Buffalo, New York 14225

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

27th day of February , 1973.

Martha J. J. J.

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TOWN SHANTY

For a Redetermination of a Deficiency or
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Taxes under Article(s) 28 & 29 of the
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8/1/65 - 11/30/67

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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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 6th day of March , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon Hall & McMahon

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Hall & McMahon
257 Elmwood Avenue
Buffalo, New York 14202

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

6th day of March , 1973.

Jayce S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TOWN SHANTY

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period(s)
8/1/65 - 11/30/67

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

State of New York
County of Albany

Lynn Wilson , 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 27th day of February , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon HALL &
McMAHON (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Hall & McMahon
17 Court Street
Buffalo, New York 14202

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

27th day of February , 1973.

James H. Durand

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 27, 1973

Town Shanty
2400 Clinton Street
Buffalo, New York 14225

Gentlemen:

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

Please take further notice that pursuant to **sections 1138 & 1243 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

DELIVERED TO SUPPLY
BY BUREAU, N.Y.C.

Niagara Square Station, 14th St.

Indefinite as Addressed

Do Not Post Again in This

Envelope as Writings

Hall & McMahon

17 Court Street 257 Elmwood Ave.

Buffalo, New York 14202

Received - 3/6/73

☐

Addressed to such number

Addressed, not forwardable

☐

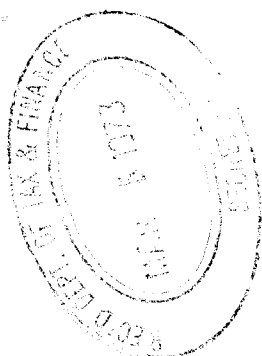
Addressed unknown

ATTN:

J. Robert Spencer

Bldg #9

2/1/73



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
TOWN SHANTY : DETERMINATION
for a Revision of 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 :
November 30, 1967. :

The taxpayer applied for a revision of 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 November 30, 1967.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York on October 21, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Hall and McMahon and the Sales Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Should the recomputed taxable sales proposed by the sales tax examiner based on a percent of mark-up of purchases be revised?

FINDINGS OF FACT

1. The taxpayer, Town Shanty, timely filed New York State sales and use tax returns for the periods in issue.
2. A Notice of Determination of sales tax for the period August 1, 1965 through November 30, 1967 was issued on May 8, 1968 against the taxpayer under Notice No. 90,754,893.
3. The taxpayer petitioned for a revision of the determination of sales taxes.
4. The sales tax examiner used a percent of mark-up theory which was based on the selling prices of bottles of whiskey and cases of

beer compared to their cost. The sales tax examiner had compared reported sales to the records of purchases of beer and liquor and had found the taxpayer's mark-up to be very low. The sales tax examiner, for example, assumed that for every bottle of whiskey purchased, 30-one ounce drinks were sold and for every case of beer purchased, every bottle was sold. These assumptions are hereby found to be erroneous. The examiner recomputed taxable sales by using a mark-up of 180% for whiskey and 136% for beer. The examiner also included in taxable sales the full amount of all food sales and all miscellaneous sales.

5. The taxpayer's evidence concerning spillage and free drinks demonstrates that only 26 drinks were sold for each bottle of whiskey. Also, the evidence shows that in a 24 bottle case of beer, only 21 bottles were sold, the others being accounted for by free drinks and breakage. The taxpayer's evidence demonstrated that most food sales were tax exempt, being sandwiches considerably under a dollar and that most miscellaneous items were under a dollar.

CONCLUSIONS OF LAW

A. The taxable whiskey sales should be recomputed on a percent of mark-up of 156% rather than 180%. The taxable beer sales should be recomputed on a percent of mark-up of 118% rather than 136%. Most of the food and miscellaneous sales were not taxable. However, the taxpayer has not submitted data for the same, and, therefore, one-half of the food sales and miscellaneous sales will be deemed subject to sales tax. The deficiency shall be recomputed accordingly.

B. The application of the taxpayer for revision of the determination of sales tax, except as modified above, is denied.


C. The taxpayer filed his returns in good faith. Any penalty is cancelled.

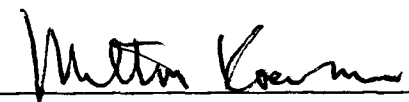
D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
February 27, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER