

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
: of :  
WILL'S BAR AND GRILL :  
For a Redetermination of a Deficiency :  
or a Refund of Sales :  
Taxes under Article(s) 28 of the Tax :  
Law for the year(s) 1965 and 1966 :

Affidavit of Mailing  
of Notice of Decision,  
by Registered Mail

State of New York  
County of Albany

LYNN HORODOWICH , being duly sworn, deposes and  
says, that she is an employee of the Department of Taxation and  
Finance, and that on the 8th day of July , 1969, she served  
the within Notice of Decision (or of "Determination") by registered  
mail upon Will's Bar and Grill

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

Will's Bar and Grill, 1218 Wantagh Avenue, Wantagh, New York  
and by delivering the same at Room 214a, Building 8, Campus, Albany,  
marked "REGISTERED MAIL" to a messenger of the Mail Room, Building  
9, Campus, Albany, to be mailed by registered mail.

That deponent further says that the said addressee is the  
petitioner herein and that the address set forth on said wrapper  
is the last known address of the petitioner.

Sworn to before me this

8th day of July , 1969.

Grace E. Pritchard

Lynn Horodowich

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
:   
of : Affidavit of Mailing  
: of Notice of Decision,  
WILL'S BAR AND GRILL : by Registered Mail  
:  
For a Redetermination of a Deficiency :  
or a Refund of SALES :  
Taxes under Article(s) 28 of the Tax :  
Law for the year(s) 1965 and 1966 :

State of New York  
County of Albany

LYNN HORODOWICH , being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 8th day of July , 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Leonard E. Friedlander, Esq.

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

Leonard E. Friedlander, Esq. 11 North Pearl Street, Albany, New York and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

8th day of July , 1969.

Grace E. Pritchard

Lynn Kardoska

June 10, 1969

Vincent P. Molineaux, Esq.  
Assistant Attorney General  
Department of Law  
State Capitol  
Albany, New York 12225

*Received*

Dear Vince:

Re: WILL'S BAR AND GRILL, INC.

One of our Commissioners has refused to sign the determination in the above-captioned matter until your signature has been affixed to the enclosed memorandum which was evidently prepared by you.

If you are still in agreement with its content, I should very much appreciate your signing it and returning it to me in the enclosed stamped, self-addressed envelope.

Sincerely,

*Rec'd  
6/13/69*

EDWARD ROOK  
Secretary to the  
State Tax Commission

BUREAU OF LAW  
MEMORANDUM

TO: State Tax Commission

FROM: Vincent P. Molineaux, Hearing Officer

SUBJECT: Will's Bar and Grill, Inc.  
Application for review of determination  
assessing or denying a refund of sales  
tax under Article 28 of the Tax Law for  
the periods ending November 30, 1965,  
February 28, 1966, May 31, 1966 and  
August 31, 1966

A hearing on the above matter was held before me in Albany, New York September 11, 1967.

At issue is whether the receipts of a bar and grill from the sales of beer at 15¢ a glass in an area of the State where the applicable sales tax rate is only 2% are subject to the sales tax even though the 2% bracket schedule prescribed by the State Tax Commission under section 1132 of the Tax Law does not require the collection of any tax from the customer on a sale under 26¢.

Petitioners operate a bar and grill in Wantagh, Nassau County, which is in the 2% sales tax area. The sale of beer for which they charge less than 26¢ accounts for approximately 80% of their total sales.

Sales tax returns were filed for all periods under review and the amount shown to be due thereon was paid. However, a deduction was made allegedly for the calculated amount of tax the applicants were unable to collect on sales of beer for less than 26¢ per sale.

Notice of determination and demand in the amount of \$287.32 was issued upon which the application for review was made.

The taxpayers contend that their only duty is to collect the sales tax from the customer as trustee for and on account of the

State pursuant to section 1132(a) of the Tax Law. Under a schedule for collection of the tax promulgated pursuant to section 1132(b) of the Tax Law and that since such collection schedule does not require the taxpayers to collect a tax from the customers on sales under 26¢ the taxpayers are not liable to pay a tax on receipts from sales under 26¢.

A tax is imposed by section 1105(d) of the Tax Law on receipts from the sale of beer by a tavern or restaurant irrespective of price.

Sections 1133(a) and 1137 of the Tax Law make vendors liable for the tax imposed and require them to pay such tax with their returns. Thus, the liability of the vendor is not merely for the tax collected or required to be collected but also for the tax imposed. Such sections so provide as follows: Section 1133(a) states that every vendor of tangible personal property or services "shall be personally liable for the tax imposed, collected or required to be collected under this Article [Article 28 of the Tax Law]." (Emphasis supplied)

Section 1137 of the Tax Law provides that "every person required to file a return . . . shall, at the time of filing such return, pay to the Tax Commission the taxes imposed by this Article [Article 28 of the Tax Law] as well as all of the moneys collected by such person acting or purporting to act under the provisions of this Article." (Emphasis supplied)

Under the proposed determination forwarded herewith the taxpayers would be required to pay sales tax on their sales of beer at

15¢ a glass even though no tax was collected from the customer.

This issue was decided by the State Tax Commission on August 4, 1967 in a formal determination entitled Matter of Bluebird Tavern and Restaurant which has been reviewed by special term Supreme Court, and the taxpayers petition was dismissed. Order of dismissal was entered October 12, 1968. For the above reasons I am of the opinion that the taxpayers are liable for the tax on sales of beer at 15¢ despite the fact that no tax has been collected by them on such sales. I have, accordingly, prepared a proposed determination ~~xxxxxxxxxx~~ sustaining the assessments and denying the claimed refund. If you agree please sign one original and three copies of the proposed determination and return the same together with the attached file to the Law Bureau for further processing.

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Hearing Officer

VPM:ldd

February 11, 1969

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION	:	
	:	
OF	:	
	:	
ROBERT F. WILL AND VINCENT WILL	:	<u>DETERMINATION</u>
d/b/a WILL'S BAR AND GRILL	:	
For a Hearing to Review a Determination	:	
of Sales Taxes Due Under Article 28 of	:	
the Tax Law for the Quarterly Periods	:	
ending 11/30/65, 2/28/66, 5/31/66, and	:	
8/31/66	:	

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Robert F. Will and Vincent Will, doing business as Will's Bar and Grill, having made application pursuant to Section 1138 of the Tax Law for a hearing to review a determination of sales taxes due for the quarterly periods ending November 30, 1965, February 28, 1966, May 31, 1966 and August 31, 1966 under Article 28 of the Tax Law and a hearing having been held at the office of the State Tax Commission, State Campus, Albany, New York, on September 11, 1967 before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance, and the record and proceedings herein having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Robert F. Will and Vincent Will, doing business as Will's Bar and Grill, are engaged in the operation of a tavern and restaurant where both food and beverages are sold to the public, including beer at 15 cents a glass.

(2) The taxpayer failed to pay tax on receipts from sales of beer at a price of 15 cents a glass.

(3) That taxpayer collected no sales tax from consumers on sales of beer at a price of 15 cents a glass.

The State Tax Commission hereby

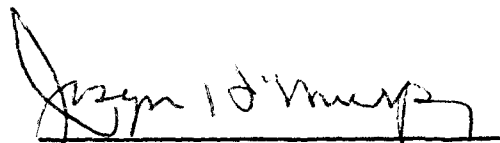
DETERMINES:

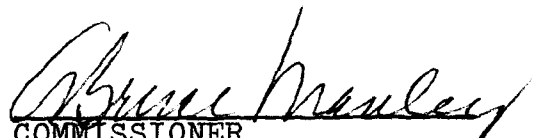
(A) That under valid regulations the taxpayers could not legally collect a sales tax from consumers on sales of beer at a price of less than 26 cents a glass (20 N.Y.C.R.R. 525.1(a)(1) ).

(B) That taxpayers are subject to the tax imposed by Section 1105(d) of the Tax Law on all of their receipts from sales of beer whether or not the tax was collected from the customer (Matter of Komp v. State Tax Comm., 1968, 56 Misc 2d 824);

(C) That the determination of sales taxes due from Will's Bar and Grill for the quarters ending November 30, 1965, February 28, 1966, May 31, 1966 and August 31, 1966 is correct and a redetermination thereof is denied.

Dated: Albany, New York, on the 30th day of June 1969 .

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER