

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Barney Google's Restaurant,  
Inc.

For a Redetermination of a Deficiency or  
a Refund of Sales Tax

Taxes under Article(s) 28 of the  
Tax Law for the (Year(s) Ending Feb. 28, 1966, May 31, 1966,  
August 31, 1966 and February 28, 1967

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

State of New York  
County of Albany

Janet Wright, 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 10th day of March, 1970, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Barney Google's  
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: Barney Google's Restaurant, Inc.  
225 East 86th Street  
New York, New York 10028

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

10th day of March, 1970

Maria Buckley

Janet Wright

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Barney Google's Restaurant,  
Inc.

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

For a Redetermination of a Deficiency or  
a Refund of Sales Tax  
Taxes under Article(s) 28 of the  
Tax Law for the (Year(s) Ending Feb. 28, 1966, May 31, 1966,  
August 31, 1966 and February 28, 1967

State of New York  
County of Albany

Janet Wright

, 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 10th day of March , 19 70, she served the within

Notice of Decision (or Determination) by (certified) mail upon Henry Hirsch,  
Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Henry Hirsch, Esq.  
132 West 43rd Street  
New York, New York

10036

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

10th day of March , 1970.

Maria Buckley

Janet Wright

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Application :  
of :  
BARNEY GOOGLE'S RESTAURANT, INC. :  
For a Hearing to Review a Determination : DETERMINATION  
of Sales Taxes due under Article 28 of :  
the Tax Law for the periods ending :  
February 28, 1966, May 31, 1966, August :  
31, 1966 and February 28, 1967 :  
:

---

The taxpayer having applied pursuant to Tax Law Section 1138 for a hearing to review a determination dated December 2, 1968 of sales taxes due under Article 28 of the Tax Law for the periods ending February 28, 1966, May 31, 1966, August 31, 1966 and February 28, 1967, by reason of transferee liability imposed by Tax Law Section 1141 (c), and a hearing having been held at the office of the State Tax Commission, Building 9, State Campus, Albany, New York on November 3, 1969 before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue raised by taxpayer is the validity of a determination of December 2, 1968 of transferee liability under Tax Law Section 1141 (c).

2. A bulk sale of the assets of Restaurant Switzerland, Inc. of 225 East 86th Street, New York City to Barney Google's Restaurant, Inc., took place on January 20, 1967. This is conceded by the taxpayer.

3. The vendor gave the buyer a list of creditors as required by the Bulk Sales Law but that list did not include the State of New York or any mention of Sales Taxes. Taxpayer's

representative wrote a letter to the New York City Department of Finance on November 14, 1966 giving notification of the bulk sale. Such notice would have been proper under the former local New York City Sales Tax in effect prior to the time the New York State Sales Tax was enacted. The taxpayer did not notify the New York State Tax Commission of the bulk sale from Restaurant, Switzerland, Inc., to Barney Google's Restaurant, Inc.

4. Determinations of sales taxes due from Restaurant Switzerland, Inc., were issued as follows:

<u>ISSUED</u>	<u>NOTICE NUMBERED</u>	<u>PERIOD ENDING</u>	<u>TAX ALONE</u>	<u>PENALTY&amp; INTEREST</u>	<u>TOTAL TAX DUE</u>
Jan. 12, 1967	90,391,402	Feb. 28, 1966	\$2,556.50	\$351.67	\$2,908.17
Jan. 12, 1967	90,391,403	May 31, 1966	2,553.55	274.66	2,828.21
June 23, 1967	90,392,498	Aug. 31, 1966	2,004.55	262.55	2,267.10
June 23, 1967	90,392,498	Nov. 30, 1966	2,546.20	257.12	2,803.32
May 31, 1967	90,392,325	Feb. 28, 1967	998.85	63.54	1,062.39

5. The penalty included in the assessment against Restaurant Switzerland is computed at 5% of the basic tax and the interest is computed at 1% per month from the time payment was due excluding the first month of such delay and extending the first month of such delay and extending to the date of such determination.

6. The determination of sales taxes due, here in question, against Barney Google's Restaurant, Inc. issued on December 2, 1968 showed taxes due as follows:

<u>PERIOD ENDING</u>	<u>TAX</u>	<u>PENALTY &amp; INTEREST</u>	<u>TOTAL TAX</u>
February 28, 1966	\$2,556.50	\$930.41	\$3486.91
May 31, 1966	\$2,553.55	\$852.73	\$3406.28
August 31, 1966	\$2,004.55	\$609.26	\$2613.81
November 30, 1966	\$2,546.20	\$697.51	\$3243.71
February 28, 1967	\$ 998.85	\$243.66	\$1242.51

7. The basic tax liability asserted against Barney Google's Restaurant, Inc., was asserted against his predecessor in interest and was taken from tax returns filed, without payment by the predecessor in interest. To this was added a penalty of 5%, plus interest at the rate of 1% a month from the time payment was due from Restaurant Switzerland, Inc., excluding the first month of such delay, and extending to the date of the determination against Barney Google's Restaurant, Inc.

8. The Department has made attempts to collect the tax from Restaurant Switzerland and individually from the former president of Restaurant Switzerland, Inc. There is no evidence that the Department was tardy or remiss in any way in these efforts. No amounts have been paid toward this liability.

Upon the foregoing findings and all the evidence herein, the State Tax Commission hereby

DETERMINES:

A. The Department is under no obligation to attempt to collect taxes from the predecessor in interest when liability is asserted against a transferee.

B. The taxpayer is personally liable under Tax Law 1141 (c) for the taxes determined against Restaurant Switzerland, Inc., and such taxes may include any penalties or interest accruing prior to the bulk sale and due also from Restaurant Switzerland, Inc.

C. The determination of taxes due dated December 2, 1968 in the amounts stated in paragraph number six is correct, the taxpayer's application for a hearing to redetermine such taxes is hereby denied.

Dated: Albany, New York  
this 9th day of March  
1970.

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER