

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERGERS AT WESTBURY, INC.

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 (Years) periods August 1, 1965
through May 31, 1967.

State of New York
County of Albany

Rae Zimmerman, 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 3rd day of May, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Alan Singer, 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:

Alan Singer, C.P.A.
76 North Broadway
Hicksville, New York 11802

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

3rd day of May, 1972.

Franka Furano

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERGERS AT WESTBURY, INC.

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)
August 1, 1965 - May 31, 1967

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 25th day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon BERGERS AT WESTBURY, INC. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bergers at Westbury, Inc.
594 Old Country Road
Westbury, 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

25th day of April, 1972

Raf. J. J. J. J. J.

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERGERS AT WESTBURY, INC.

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)
August 1, 1965 - May 31, 1967

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 25th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon ALAN SINGER,
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:

Alan Singer, C.P.A.
100 East Old Country Road
Mineola, New York 11501

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

25th day of April, 1972.

Rae J. [Signature]

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 25, 1972

Bergers at Westbury, Inc.
594 Old Country Road
Westbury, 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** 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 relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
BERGERS AT WESTBURY, 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 August 1, 1965 through :
May 31, 1967. :

Bergers at Westbury, Inc., applied 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 August 1, 1965 through May 31, 1967.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission, in the City of New York on November 15, 1971. The applicant was represented by Alan Singer, C.P.A. The Sales Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Whether the determination of additional sales tax was properly supported by the field audit procedures and findings, and whether the vendor has sustained the burden of disproving the findings of additional taxable sales.

FINDINGS OF FACT

1. The applicant, Bergers at Westbury, Inc., filed New York State and local sales and use tax returns for the periods August 1, 1965 through May 31, 1967.
2. On September 20, 1967, the Sales Tax Bureau issued a Notice of Determination, numbered 90,752,973 in the amount of \$619.77, plus penalties and interest, as a result of a field audit of the applicant's records.

3. On October 10, 1967, the applicant filed the equivalent of an application for revision of the determination, and a demand for a hearing.

4. The applicant operates a food store in which kosher delicatessen and other foods are sold. There are tables and chairs in the premises providing table service of hot and cold sandwiches, appetizers, special food platters, bottled beer and soda. The bulk of the business consists of nontaxable sales of "take-out" foods, including "cold cuts" of meat.

5. The applicant's records consisted of a sales and disbursements journal, and a day book. Table sales and "take-out" meals are written up on food checks. Nontaxable food sales are only rung up on the cash register. A detailed examination was made of transactions for three days of cash register tapes and food checks, from which the Sales Tax Bureau determined that 26.1% of total receipts consisted of taxable sales. At the request of the applicant, an auditor from the Sales Tax Bureau observed the operations of the business on a Saturday. Menus obtained from the applicant used on one or more of the days upon which the audit was performed included a variety of served foods and meals, many of which were priced at more than one dollar.

6. The determination of additional taxable sales and resulting sales tax were based upon substantial findings of fact in the course of a field audit of the applicant's records. The field audit followed appropriate procedures commensurate with the nature of the business activities.

7. The applicant has failed to disprove the findings of additional taxable sales, or the computation of the additional sales tax due.

DETERMINATION

A. The determination of additional sales taxes was properly supported by the field audit procedures and findings, and the applicant has failed to sustain its burden of disproving the findings of the Sales Tax Bureau.

B. The Notice of Determination is sustained, and the application for revision of the determination is denied.

DATED: Albany, New York

April 25, 1972.

STATE TAX COMMISSION

Thomas Ballou

COMMISSIONER

George Bradley

COMMISSIONER

Milton Korman

COMMISSIONER