

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN FAHRBACH, JR.

D/B/A FAHRBACH'S RESTAURANT

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)~~ period June 1, 1967
through November 30, 1969

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

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 29th day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon John Fahrbach, Jr.
D/B/A Fahrbach's Restaurant
(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John Fahrbach, Jr.
D/B/A Fahrbach's Restaurant
1416 Glover Street
Bronx, New York 10462

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

29th day of March, 1972.

Martha Furaw

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 29, 1972

John Fahrbach, Jr.
D/B/A Fahrbach's Restaurant
1416 Glover Street
Bronx, N.Y. 10462

Dear Mr. Fahrbach:

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

Please take further notice that pursuant to **sections 1138 and 1243** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **four 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,

Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

for Revision of a Determination or for :
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the period June 1, 1967 through :
November 30, 1969. :

3. On November 23, 1970, the Sales Tax Bureau issued a notice of determination and demand, for the periods in issue, numbered 90,350,407 in the amount of \$697.77, plus statutory penalties and

interest. On January 22, 1971, the applicant filed the equivalent of an application for revision of the determination.

4. The applicant operated a restaurant, bar and grill in a slum area of New York City. Except for occasional errands, the applicant had no employees and tended the business from early opening to evening closing. An outside bookkeeper wrote up the store records and prepared the tax returns.

5. The notice of determination was based upon the resulting findings of a field examination of the applicant's books and records including general ledgers and register tapes. The basic findings are summarized as follows:

(a) The markup on purchases relating to the sale of liquor was increased from a submitted 75 1/2% to 139%, based on purchases and sales shown in the general ledger.

(b) The markup on purchases relating to the sale of beer was increased from a submitted 81% to 100% based upon industry-wide experience by the District Tax Office.

(c) Based upon a four-day test period of cash register tapes, the markup on purchases relating to overall sales was increased from a submitted 49% to 53%. The applicant's estimate that 10% of food sales were for one dollar or more and taxable was accepted without question.

6. The applicant contended that the totals should be reduced by the value of merchandise that had been stolen from the store and not sold, but could not prove the value thereof or the specific dates of these losses.

7. The applicant contended that the business had been closed during indeterminate periods of illness but could not furnish the dates of the closings.

8. The audit of the applicant's books and records and the resulting findings followed generally accepted procedures and adequate tests consistent with the nature of the business operations and available records.

DETERMINATION

A. The examination of the applicant's books and records was properly conducted, and the resulting findings are based upon substantial evidence.

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

DATED: Albany, New York

March 29, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Robert Manley

COMMISSIONER

Milton Korman

COMMISSIONER