

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

VI-KEN PUB, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~ :
June 1, 1971 through February 28, 1974.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of March , 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Vi-Ken Pub, Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Vi-Ken Pub, Inc.
Smithtown Boulevard & Lake Avenue
Nesconset, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~XXXXXX~~ 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

4th day of March , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of March , 19 77, ~~he~~ served the within
Notice of Determination by (~~certified~~) mail upon John Abagnale

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. John Abagnale
33 Seward Drive
Dix Hills, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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

4th day of March , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

Vi-Ken Pub, Inc.
Smithtown Boulevard & Lake Avenue
Nesconset, 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 deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Frank J. Puccia

Enc.

**Supervisor of Small
Claims Hearings**

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

Applicant, Vi-Ken Pub, Inc., Smithtown Boulevard and Lake Avenue, Nesconset, New York, filed an application 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, 1971 through February 28, 1974. A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 13, 1976. Applicant appeared by William V. Kenny, President and by John Abagnale, Accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

Are the purchase mark-up percentages arrived at by the Sales Tax Bureau, and used as the basis of computing additional sales tax due, reflective of applicant's selling prices?

1. Applicant, Vi-Ken Pub, Inc., operates a bar and grill located in Nesconset, New York. It sells beer and liquor, charging a flat price which includes sales tax. At the close of the sales tax quarter, the sales tax due is computed by dividing the total receipts by 1.07, which has the affect of segregating the taxable sales and sales tax due thereon.

2. A sales tax audit was performed for the period June 1, 1967 through February 28, 1972. As a result of this audit, the Sales Tax Bureau issued a Notice of Determination and Demand against the applicant, Vi-Ken Pub, Inc., for additional sales tax due in the amount of \$3,809.74 plus penalty and interest of \$895.29.

3. The audit findings were arrived at based upon the mark-up of purchases. A purchase mark-up test was performed for the month of June, 1973 and was based upon the assumption that the selling price per drink did not include sales tax. The sales tax auditor made this assumption because, although a placard was displayed by the applicant, it did not separately state the selling price and the sales tax due thereon. Purchase mark-ups of 363.19 percent on liquor and 177.26 percent on beer were computed as a result of the purchase mark-up test. There are other aspects of the audit which are not in contention.

4. An informal conference was held on December 4, 1974 and resulted in the recommendation that the sales tax deficiency be recomputed using the purchase mark-up of 283.00 percent on liquor. (The mark-up of 177.26 percent on beer was not reduced). The reduction in the purchase mark-up percentage of liquor does not alter the Sales Tax Bureau's assumption that sales tax was not included in the selling price per drink.

5. Applicant, Vi-Ken Pub, Inc., contends that the purchase mark-up percentages are overstated and should be reduced to reflect the inclusion of sales tax in its selling price per drink.

6. The nature of applicant's business renders the issuance of sales invoices to customers impractical.

7. Applicant, Vi-Ken Pub, Inc., displays a placard which reads "Price of Drink Includes Sales Tax."

CONCLUSIONS OF LAW

A. That, applicant, Vi-Ken Pub, Inc., is deemed to have charged and collected sales tax on drinks sold at its bar and grill.

B. That, the mark-up percentages used by the Sales Tax Bureau in computing the additional sales tax due from applicant, Vi-Ken Pub, Inc., are not reflective of applicant's selling price since they presuppose that no sales tax was charged and collected.

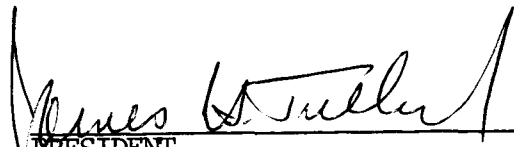
C. That, the deficiency in sales tax shall be recomputed on the basis of purchase mark-ups of 159.12 percent on beer and 257.94 percent on liquor.

D. That, the Notice of Determination and Demand shall be adjusted to reflect the aforesaid recomputation.

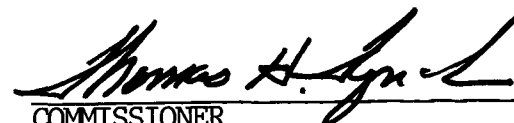
E. That, penalties shall be abated and minimum interest shall be added to the total amount due until paid.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER