

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RALPH SORRENTINO d/b/a
BONAPARTE RESTAURANT

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 Year(s) or Period(s) :
December 1, 1971 through November 30, 1974.

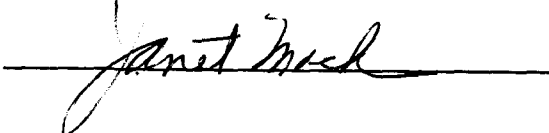
State of New York
County of Albany

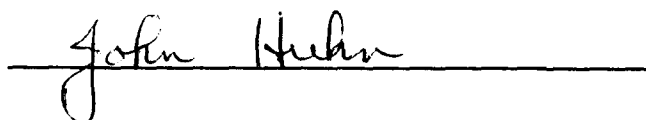
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25 day of November, 1977, she served the within
Notice of Determination by (revised) mail upon Robert E. Rochlin,
CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert E. Rochlin, CPA
Schimmel, Rochlin & Lipsky P.C., CPA's
516 Fifth Avenue
New York, NY 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 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

25 day of November, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RALPH SORRENTINO d/b/a
BONAPARTE RESTAURANT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year(s) or Period(s) :
December 1, 1971 through November 30, 1974.

State of New York
County of Albany

John Huhn

, 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 25 day of November, 1977, she served the within

Notice of Determination by (corrected) mail upon Ralph Sorrentino
d/b/a Bonaparte Restaurant

(representative of the) the petitioner in the within proceeding,

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

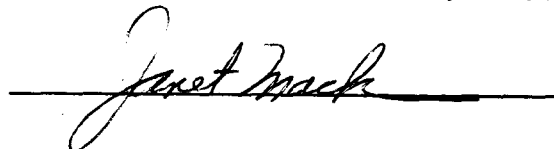
as follows: Ralph Sorrentino d/b/a
Bonaparte Restaurant
1613 Avenue M
Brooklyn, New York 11230

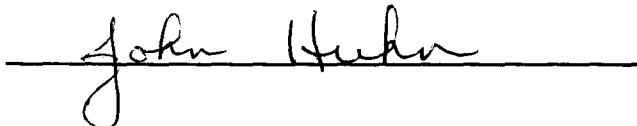
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last known address of the (representative of the) petitioner.

Sworn to before me this

25 day of November, 1977







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
November 25, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Ralph Sorrentino d/b/a
Bonaparte Restaurant
1613 Avenue M
Brooklyn, New York 11230**

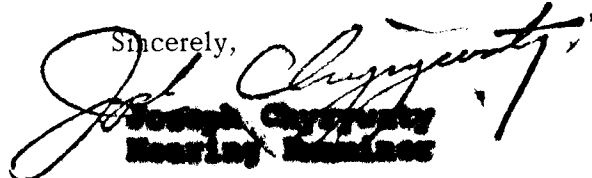
Dear Mr. Sorrentino:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1130 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Joseph Chirba
Deputy Commissioner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
RALPH SORRENTINO d/b/a	:	
BONAPARTE RESTAURANT	:	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 Period December 1, 1971 through	:	
November 30, 1974.	:	

Applicant, Ralph Sorrentino d/b/a Bonaparte Restaurant, 1613 Avenue M, Brooklyn, New York 11230, 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 December 1, 1971 through November 30, 1974 (File No. 10702).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1977 at 1:15 P.M. Applicant appeared by Robert E. Rochlin, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau, through the use of "markups", properly determined the applicant's tax liability.

FINDINGS OF FACT

1. On October 3, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant,

Ralph Sorrentino d/b/a Bonaparte Restaurant, for the period December 1, 1971 through November 30, 1974 in the amount of \$15,215.14 in tax, plus penalty and interest. Said notice was the result of an audit of the applicant's records.

2. The applicant owned and operated a restaurant during the period December 1, 1971 through November 30, 1974. The restaurant was primarily a dining establishment, but it also served liquor, wine and beer to compliment its meals.

3. On audit, the Sales Tax Bureau computed a markup of 266.75 percent for liquor purchases and 190.3 percent for beer purchases. The Bureau estimated the food markup to be 175 percent. The markup on food was based on the auditor's experience. The markup percentages of liquor and beer were arrived at through the review of their respective purchases, with consideration given to the following variables:

- a. Amount of liquor served per drink i.e. 1 oz. for highballs and 1½ oz. for cocktails.
- b. Selling price per drink.
- c. Amounts of spillage or waste.

4. Applicant's markup on purchases relating to the sale of food during the period December 1, 1971 through November 30, 1974 was 150 percent.

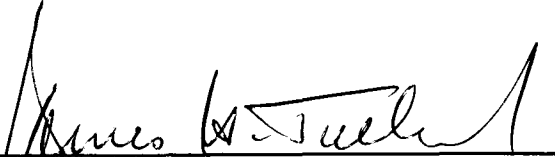
CONCLUSIONS OF LAW


A. That the Sales Tax Bureau used established audit procedures and techniques in arriving at the markups for liquor and beer purchases, and that the resulting markups are correct. That the markup on food estimated to be 175 percent is hereby reduced to 150 percent.

B. That the application of Ralph Sorrentino, d/b/a Bonaparte Restaurant, is granted to the extent of reducing additional sales tax due for the period December 1, 1971 through November 30, 1974 from \$15,215.14 to \$9,761.56, together with such interest as may be lawfully due; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 3, 1975; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
November 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER