

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RED GARTER CAFE, INC.

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 ~~XXXXXX~~ Period(s) :  
August 1, 1965 through February 28, 1970

State of New York  
County of Albany

John Huhn, 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 29th day of September, 1977, he served the within  
Notice of Determination by ~~(certified)~~ mail upon Red Garter Cafe, Inc.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Red Garter Cafe, Inc.  
c/o Joseph Cangemi  
2747 East 26th Street  
New York, NY  
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.

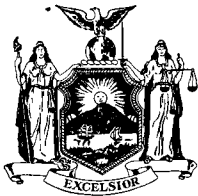
That deponent further says that the said addressee is the ~~(representative of)~~  
of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

29th day of September, 1977

Janet Mack

John Huhn



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

**September 29, 1977**

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

**Red Garter Cafe, Inc.  
c/o Joseph Cangemi  
2747 East 26th Street  
New York, NY**

**Gentlemen:**

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) **1138 & 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 Chyrywat  
Hearing Examiner**

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Application :  
of :  
RED GARTER CAFE, INC. :  
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 August 1, 1965 through :  
February 28, 1970. :

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977 at 9:15 A.M. Applicant appeared by Joseph Cangemi, president of said applicant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

Whether the Sales Tax Bureau's determination of additional sales tax due for the period August 1, 1965 through February 28, 1970 properly reflected applicant's sales tax liability.

FINDINGS OF FACT

1. During the period August 1, 1965 through April of 1969, applicant operated a bar and grill at 1735 Flatbush Avenue, Brooklyn, New York. With exception of six weekends in January and February of 1970, applicant did not operate the bar and grill during the period May, 1969 through February, 1970.

2. On August 31, 1970, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period August 1, 1965 through February 28, 1970, for additional sales tax due in the sum of \$17,728.71, plus penalty and interest of \$6,025.64.

3. The additional sales tax of \$17,728.71 assessed by the Sales Tax Bureau was determined on the basis of external indices, since actual records were not presented by applicant when requested by the Bureau for audit.

4. Applicant presented books and records at a conference held on July 20, 1976 and upon review, the Sales Tax Bureau recommended that the additional sales tax due of \$17,728.71 be reduced to \$3,253.04.

5. The computation used to arrive at the reduced sales tax liability included \$900.00 in tax due for the period during which applicant was inactive.

CONCLUSIONS OF LAW

A. That the reduced sales tax liability is further reduced by \$900.00 to reflect the period in which applicant was inactive.

B. That the application of Red Garter Cafe, Inc. is granted to the extent of reducing the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 31, 1970 to \$2,353.04, plus interest at the minimum statutory rate, and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

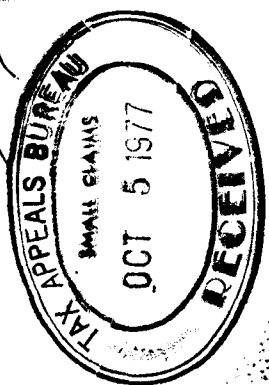
  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



44/9/77



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RED GARTER CAFE, INC.

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 ~~XXXXXX~~ Period ~~(s)~~  
August 1, 1965 through February 28, 1970.

State of New York  
County of Albany

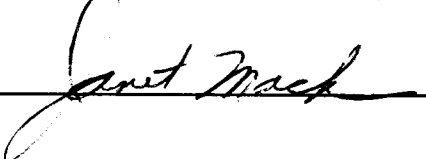
John Huhn, being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 19th day of October, 1977, ~~she~~ served the within  
Notice of Determination by ~~(XXXXXX)~~ mail upon Red Garter Cafe, Inc.

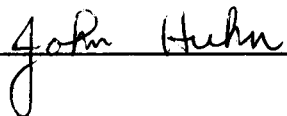
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Red Garter Cafe, Inc.  
c/o Joseph Cangemi  
1735 Flatbush Avenue  
Brooklyn, New York 11231  
and by depositing same enclosed in a postpaid 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 (~~XXXXXX~~)  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~XXXXXX~~) petitioner.

Sworn to before me this

19th day of October, 1977.

  
\_\_\_\_\_

  
\_\_\_\_\_



**SMALL CLAIMS**

TA-26 (4-76) 25M

**STATE OF NEW YORK**

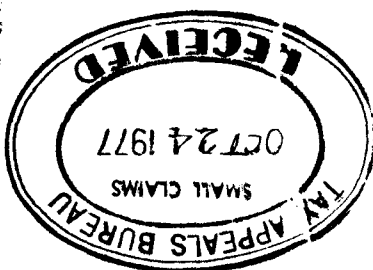
Department of Taxation and Finance

**TAX APPEALS BUREAU**

STATE CAMPUS

ALBANY, N. Y. 12227

Red Garter Cafe, Inc.  
c/o Joseph Cangemi  
1735 Flatbush Avenue  
Brooklyn, New York 11231



VANDERVEER STA.



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

September 29, 1977

REMAILED  
October 19, 1977

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

Red Garter Cafe, Inc.  
c/o Joseph Cangemi  
2747 East 26th Street  
New York, NY

Gentlemen:

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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 Chyrywaty  
Hearing Examiner

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
RED GARTER CAFE, 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 Period August 1, 1965 through	:	
February 28, 1970.	:	

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Applicant, Red Garter Cafe, Inc., c/o Joseph Cangemi, 2747 East 26th Street, New York, 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 August 1, 1965 through February 28, 1970 (File No. 10290).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977 at 9:15 A.M. Applicant appeared by Joseph Cangemi, president of said applicant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

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FINDINGS OF FACT

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DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
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COMMISSIONER