

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
THE ESTATE OF HARRY PAUGE : AFFIDAVIT OF MAILING
d/b/a SHIP'S WHEEL TAVERN :
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)~~ Period(s) :
September 1, 1973 through November 30, 1974.

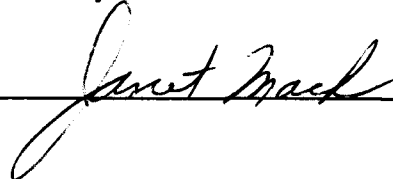
State of New York
County of Albany

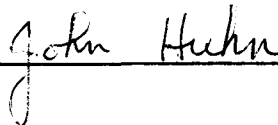
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 11 day of October , 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon The Estate of
Harry Pauge, d/b/a Ship's Wheel Tavern
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Estate of Harry Pauge
d/b/a Ship's Wheel Tavern
c/o Fallon, Fallon & Garbarino
53 Main Street
Sayville, New York 11782
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

11 day of October , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
THE ESTATE OF HARRY PAUGE
d/b/a SHIP'S WHEEL TAVERN

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 ~~xxxxxxx~~ Period(s) :
September 1, 1973 through November 30, 1974.

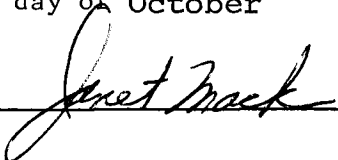
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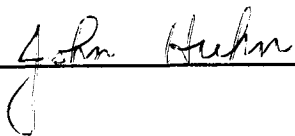
John Huhn, being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 11 day of October, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon William R.
Garbarino, Esq.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: William R. Garbarino, Esq.
Fallon, Fallon & Garbarino
53 Main Street
Sayville, New York 11782
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

11 day of October, 1977.







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

October 11, 1977

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

Estate of Harry Paugé
d/b/a Ship's Wheel Tavern
c/o Fallon, Fallon & Garbarino
53 Main Street
Seyville, New York 11782


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 Chyorny
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
THE ESTATE OF HARRY PAUGE	:	DETERMINATION
d/b/a SHIP'S WHEEL TAVERN	:	
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 September 1, 1973 through	:	
November 30, 1974.	:	

Applicant, the Estate of Harry Pauge, d/b/a Ship's Wheel Tavern, c/o Fallon, Fallon & Garbarino, 53 Main Street, Sayville, New York 11782, 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 September 1, 1973 through November 30, 1974. (File No. 17071).

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 June 8, 1977 at 1:15 p.m. Applicant appeared by William R. Garbarino, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether applicant's delay in filing quarterly New York State and local sales and use tax returns and paying over tax due for the period September 1, 1973 through November 30, 1974 was excusable.

FINDINGS OF FACT

1. The decedent, Harry Pauge, filed a quarterly New York State and local sales and use tax return for the period September 1, 1973 through November 30, 1973, without payment of the tax due for said period.

2. Subsequent to the decedent's death on December 14, 1974, William H. Pauge, executor of the Estate of Harry Pauge, filed quarterly New York State and local sales and use tax returns for applicant for the period December 1, 1973 through November 30, 1974, without payment of the tax due for said period. Said returns were received by the Sales Tax Bureau on March 4, 1975, each of which was several months late.

3. The Sales Tax Bureau issued five notices and demand for payment of sales and use tax due against Ship's Wheel Tavern as follows:

<u>PERIOD ENDED</u>	<u>TAX</u>
11/30/73	\$ 297.64
2/28/74	828.73
5/31/74	833.91
8/31/74	806.82
11/30/74	635.88
Total	<u>\$3,402.98</u>

In addition to the aforesaid tax, penalty and interest was assessed for each of the periods involved.

4. On December 1, 1975, the executor submitted full payment of the tax, penalty and interest (computed to date of said payment) due for the period September 1, 1973 through November 30, 1974 in the sum of \$4,723.66, of which \$1,320.68 represented the penalty and interest.

5. On March 3, 1976, the executor filed five applications for refund of penalty and interest totaling \$1,116.51, upon the grounds that decedent's ill health during the period September 1, 1973 through November 30, 1974, as well as the estate's lack of funds, constituted a reasonable excuse for failure to timely file New York State and local sales and use tax returns and pay over the tax due for said period.

6. On September 24, 1976, the Sales Tax Bureau submitted a refund voucher to the Department of Audit and Control, recommending that applicant's application for refund be granted to the extent of \$830.69 and that it be denied to the extent of \$285.82. The aforesaid amounts were computed on the basis of the penalty being waived and interest computed at the minimum statutory rates.

7. On September 30, 1976, the Department of Audit and Control rejected the aforesaid refund voucher submitted by

the Sales Tax Bureau, upon the grounds that reasonable cause had not been established by the applicant.

8. During the period September 1, 1973 through November 30, 1974, decedent was in ill health, suffering from asthma and emphysema. Said illness caused the decedent to neglect his business obligations. However, decedent continued to collect and summarize daily cash receipts.

CONCLUSIONS OF LAW

A. That in light of the fact that decedent's illness did not prevent him from collecting and summarizing daily cash receipts, there was no evidence to establish that his illness prevented him from timely filing applicant's New York State and local sales tax returns for the period September 1, 1973 through August 31, 1974.

B. That the decedent's failure to file timely New York State and local sales and use tax returns for the period September 1, 1973 through August 31, 1974 and pay over the tax due for said period, was not due to an excusable delay within the meaning and intent of section 1145(a) of the Tax Law.

C. That decedent's death on December 14, 1974 prevented him from timely filing applicant's New York State and local sales tax return for the period ending November 30, 1974.

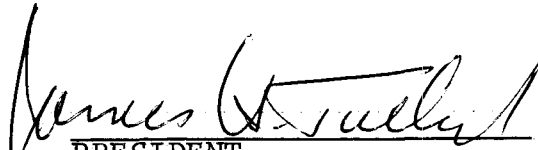
D. That decedent's death in December of 1974 and the applicant's subsequent failure to file New York State and local sales and use tax returns for the period ending November 30, 1974, and its failure to pay over the tax due for said period was an excusable delay within the meaning and intent of section 1145(a) of the Tax Law. Accordingly, the penalty is waived and minimum statutory interest is imposed for said period.

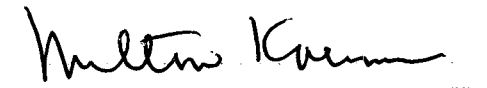
E. That the application of the Estate of Harry Pauge, d/b/a Ship's Wheel Tavern, is granted to the extent indicated in Conclusion of Law, "D", above, and is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

October 11, 1977


PRESIDENT


COMMISSIONER


COMMISSIONER