

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

JACK AND RUDY'S TOWN TAVERN, INC., RUDOLPH ZODDA (Seller),
and PATANJAK RESTAURANT, INC., PATRICK J. MORONEY and
JOHN J. RONACHER (Purchasers)
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 (s) :
April 2, 1974.

AFFIDAVIT OF MAILING

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 11th day of October, 1977, he served the within

Notice of Determination by ~~(XXXXXXXXXX)~~ mail upon Jack & Rudy's Town Tavern Inc.
Rudolph Zodda (Seller)

~~(XXXXXXXXXXXXXXXXXXXX)~~ the petitioner in the within proceeding,

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

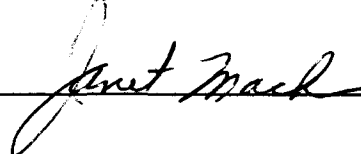
as follows: Jack & Rudy's Town Tavern Inc.
Rudolph Zodda (Seller)
732 Rt. 304
New City, New York 10956

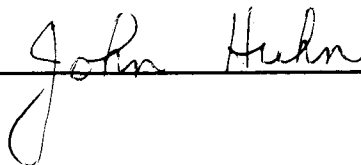
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

Sworn to before me this

11th day of October, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACK AND RUDY'S TOWN TAVERN, INC., RUDOLPH ZODDA (Seller),
and PATANJAK RESTAURNAT, INC., PATRICK J. MORONEY and
JOHN J. RONACHER (Purchasers)
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 ~~YEARS XXXXX~~ Period ~~(XX~~ :
April 2, 1974.

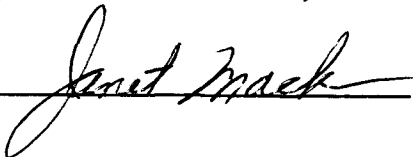
State of New York
County of Albany

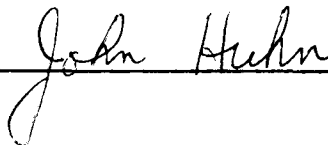
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 11th day of October , 19 77, he served the within
Notice of Determination by ~~(certified)~~ mail upon Jack Topal, Esq.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jack Topal, Esq.
32 Court Street
Brooklyn, New York 11201
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

11th day of October , 19 77





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK AND RUDY'S TOWN TAVERN, INC., RUDOLPH ZODDA (SELLER),
and PATANJAK RESTAURANT, INC., PATRICK J. MORONEY and
JOHN J. RONACHER (Purchasers)
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 ~~Years 1975~~ Period ~~(s)~~ :
April 2, 1974.

AFFIDAVIT OF MAILING

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 11th day of October, 1977, he served the within

Notice of Determination by ~~XXXXXX~~ mail upon Patanjak Restaurant Inc.
Patrick J. Moroney and

John J. Ronacher ~~XXXXXX~~ the petitioner in the within proceeding,
(Purchasers)

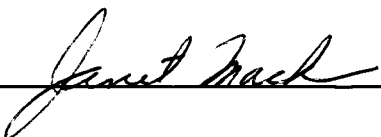
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Patanjak Restaurant Inc.
Patrick J. Moroney and John J. Ronacher (Purchasers)
732 Rt. 304
New City, New York 10956

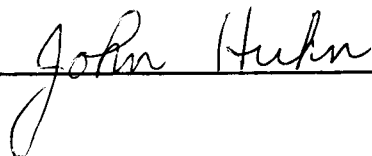
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

11th 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

Jack & Rudy's Town Tavern Inc.
Rudolph Zodda (Seller)
732 Rt. 304
New City, New York 10956

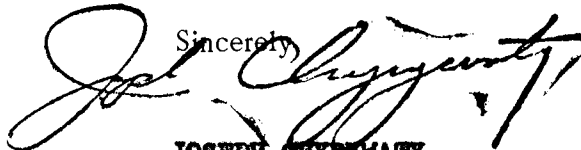
Dear Mr. Zodda:

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 & 1250** 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 CHYRIWATY
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative



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

Patanjak Restaurant Inc.
Patrick J. Moroney and John J. Rosacher (Purchasers)
732 Rt. 304
New City, New York 10956

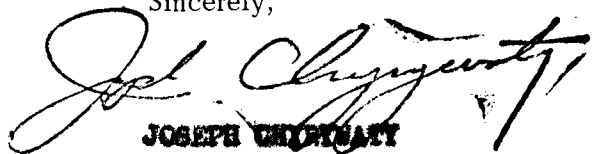
Gentlemen:

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 & 1250** 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 CHERMANT
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
JACK AND RUDY'S TOWN TAVERN, INC. : DETERMINATION
RUDOLPH ZODDA (Seller), and :
PATANJAK RESTAURANT, INC., :
PATRICK J. MORONEY AND JOHN J. RONACHER :
(Purchasers) :
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 April 2, 1974. :
:

Applicants, Jack and Rudy's Town Tavern, Inc., Rudolph Zodda (Seller), Patanjak Restaurant, Inc., Patrick J. Moroney and John J. Ronacher (Purchasers), 732 Rt. 304, New City, New York 10956, 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 April 2, 1974. (File No. 14147).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 30, 1977 at 9:15 A.M. Applicant appeared by Jack Topal, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether an agreement for the sale of a business constituted an agreement for the sale of the business assets, subject to the provisions of section 1141(c) of the Tax Law, or whether it constituted an agreement for the sale of corporate stock.

FINDINGS OF FACT

1. On February 18, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Jack and Rudy's Town Tavern, Inc. (Seller) and a Notice and Demand for Payment of Sales and Use Taxes Due against Patanjak Restaurant, Inc. (Purchaser). These notices were issued as the result of an audit by the Sales Tax Bureau, which determined that an agreement between Rudolph Zodda (seller), and Patrick J. Moroney and John J. Ronacher (purchasers) constituted a sale of business assets subject to the provisions of section 1141(c) of the Tax Law.

2. On April 2, 1974, an agreement between Rudolph Zodda (seller), Patrick J. Moroney and John J. Ronacher (purchasers) was executed. The agreement stated in part that: "1. The seller agrees to sell and the purchasers agree to buy from the seller all of the issued and outstanding shares of stock of Jack and Rudy's Town Tavern, Inc., consisting of two hundred (200) shares now owned by the seller." The purchase price for the stock was the sum of \$245,000.00. The agreement contained no provision for either the sale or purchase of tangible personal property.

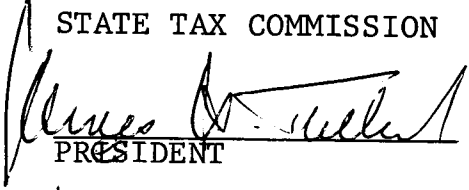
CONCLUSIONS OF LAW

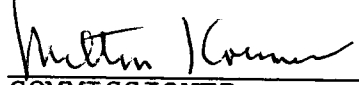
A. That the agreement between Rudolph Zodda (seller), and Patrick J. Moroney and John J. Ronacher (purchasers) was for the sale of the corporate stock of Jack and Rudy's Town Tavern, Inc. and, therefore, not subject to the provisions of Articles 28 and 29 of the Tax Law.

B. That the application of Jack and Rudy's Town Tavern Inc., Rudolph Zodda (seller), and Patanjak Restaurants, Inc., Patrick J. Moroney and John J. Ronacher (purchasers) is granted.

DATED: Albany, New York
October 11, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER