

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LEONARD GOLDNER
d/b/a SINGER'S RESTAURANT
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)
March 1, 1970 to May 31, 1973.

:
:
:
:
:
:
:
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini, 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 21st day of June, 1977, she served the within Notice of Determination by ~~(certified)~~ mail upon Leonard Goldner ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Leonard Goldner
d/b/a Singer's Restaurant
South Main Street
Liberty, New York 12754

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

21st day of June, 1977.

Janet Mack

Marsina Donnini

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD GOLDNER

d/b/a SINGER'S RESTAURANT

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) :
March 1, 1970 to May 31, 1973.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini , 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 21st day of June , 1977, she served the within Notice of Determination by ~~certified~~ mail upon Gerald Orseck

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Gerald Orseck, Esq.

Gerald Orseck, Esq.
Route Fifty-Two East
Liberty, New York 12754

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

21st day of June , 1977.

Marcia L. Connors

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 21, 1977

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

Mr. Leonard Goldner
d/b/a Singer's Restaurant
South Main Street
Liberty, New York 12754

Dear Mr. Goldner:

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

Please take further notice that pursuant to
Section(s) **1138 and 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,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
LEONARD GOLDNER	:	DETERMINATION
d/b/a SINGER'S RESTAURANT	:	
	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Periods March 1, 1970 to May 31,	:	
1973.	:	

Applicant, Leonard Goldner, d/b/a Singer's Restaurant, South Main Street, Liberty, New York 12754, 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 periods March 1, 1970 to May 31, 1973. (File No. 00246).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York on September 1, 1976 at 10:00 A.M. Applicant appeared by Gerald Orseck, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether additional sales tax was due from applicant, Leonard Goldner, d/b/a Singer's Restaurant, for the periods March 1, 1970 to May 31, 1973.

FINDINGS OF FACT

1. On March 19, 1974, as a result of a field audit of applicant, Leonard Goldner, d/b/a Singer's Restaurant, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the periods March 1, 1970 to May 31, 1973, in the amount of \$23,781.37, plus penalty and interest of \$7,389.15, for a total of \$31,170.52.

2. During the period in issue, applicant, Leonard Goldner, d/b/a Singer's Restaurant, operated a restaurant with a service bar where delicatessen cold-cuts, sandwiches and beverages were sold for off-premises consumption. The available records were the general ledger, cash receipts, disbursement books, sales journal, accounts-payable ledger, sales tax returns filed, cancelled checks, purchase invoices and Federal returns. Sales were entered in the general ledger from the sales journal. Nontaxable sales were deducted from gross sales, the result of which was then divided by 106% to determine the sales tax.

3. The assessment, made as a result of the field audit performed in February 1974, was upon an estimate that 90% of applicant, Leonard Goldner, d/b/a Singer's Restaurant's gross business was taxable. There was no basis for such estimate. The gross sales, as per records, were in agreement with gross sales reported on returns filed by the applicant.

4. Applicant, Leonard Goldner, d/b/a Singer's Restaurant, did not keep any register tapes or copies of customers' sales receipts for the period in issue. Following the audit, tapes were kept.

5. In April 1973, an eight-day test period of sales was made by the field auditor. During said period, it was determined that 28.4% of total cash sales were nontaxable delicatessen sales. It was also determined that as the result of payment for cash payouts, the register was short 3.1%. This was the difference between sales-journal entries and cash register tapes. A discrepancy in overcharge of .8% was also found. With respect to liquor sales, a markup test indicated 170.4% was the markup as per sales and purchases. The percentage for beer sales was 185.3%, and for soda drinks it was 79.5%. In the computation for additional soda sales, 10% was allowed for bar drinks. Therefore, the computation schedule is as follows:

Gross sales reported	\$858,425.00
Sales unreported (3.1%)	26,623.00
Additional beer & liquor sales as determined by markup	<u>28,345.00</u>
Total gross sales	913,393.00
Nontaxable sales (28.4%)	<u>259,403.81</u>
Taxable sales adjusted	\$653,989.19
5% tax due on \$247,714.52 (5/31/70 to 5/31/71)	\$ 12,385.73
6% tax due on \$406,274.67 (8/31/71 to 5/31/73)	24,376.59
	<u> </u>
Total due	\$ 36,762.22
Overcharge (.8%)	<u>203.98</u>
	\$ 36,966.20
Tax paid	<u>25,497.64</u>
Total due	<u><u>\$ 11,468.56</u></u>

6. The books and returns filed by Leonard Goldner, d/b/a Singer's Restaurant, were kept by a certified public accountant who advised him on tax matters.

CONCLUSIONS OF LAW

A. That the computation by the Sales Tax Bureau for additional tax due was, in part, erroneous.

B. That the recomputation of additional sales tax due set forth in paragraph "5" of the Findings of Fact is based

on the records of the applicant, Leonard Goldner, d/b/a Singer's Restaurant, and the result of markups which followed generally accepted procedures and tests, consistent with the nature of the business operations.

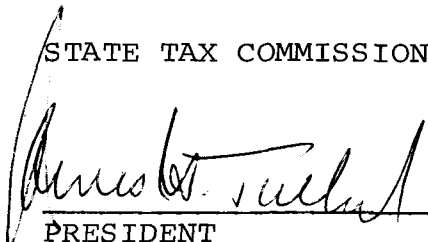
C. That the applicant acted in good faith and upon the advice of his accountant.

D. That the application of Leonard Goldner is granted to the extent that the penalty and additional interest are waived; that the recomputation of sales tax due is \$11,468.56, plus statutory interest; 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 March 19, 1974; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York

June 21, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER