

In the Matter of the Petition

of

GEORGE EVANITSKY

d/b/a CIRCLE E DINER

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)
12/1/72 through 11/30/75.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, 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 12th day of May, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon George Evanitsky
d/b/a Circle E Diner
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: George Evanitsky
d/b/a Circle E Diner
East Front Street
Hancock, 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
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

12th day of May, 1977.

Bruce Batchelor

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

May 12, 1977

TELEPHONE: (518) 457-1723

George Evanitsky
d/b/a Circle E Diner
East Front Street
Hancock, NY 13783

Gentlemen:

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 decision 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,

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

2. After a field audit by the Sales Tax Bureau, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated March 12, 1976, was issued against applicant for additional sales tax in the amount of \$660.40, plus \$215.74 penalty and interest, for a sum of \$876.14.

3. The Sales Tax Bureau contended that sales tax was not included in gross receipts recorded by applicant.

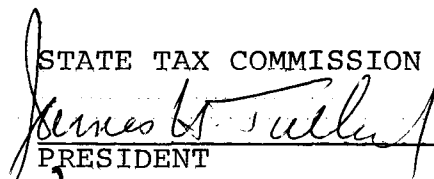

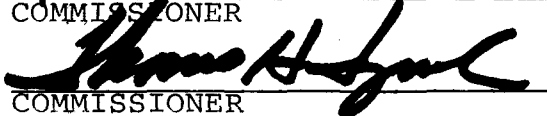
4. Applicant, George Evanitsky, d/b/a Circle E Diner, operated a small restaurant as a sole proprietorship in Hancock, New York. He collected the sales tax when collecting the sales price of the item sold. When recording total cash received during each day, the cash record included the sales tax collected. On his sales tax return, applicant computed the sales tax due by dividing the recorded gross receipts by 100 plus the proper percent of the tax.

CONCLUSIONS OF LAW

A. That applicant, George Evanitsky, d/b/a Circle E Diner, collected, reported and paid the proper amount of sales tax for the period December 1, 1972 through November 30, 1975.

B. That the application of George Evanitsky, d/b/a Circle E Diner, is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated March 12, 1976 is cancelled.

DATED: Albany, New York
May 12, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER