

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

URBAN LIQUORS, INC. & RICHARD ATWELL,

Individually and as an officer.

For a Redetermination of a Deficiency or :

a Revision of a Determination or a Refund

of Sales and Use :

Taxes under Article(s) 28 and 29 of the

Tax Law for the Year(s) 1972 and 1973

March 1, 1972 through February 28, 1975

AFFIDAVIT OF MAILING

State of New York

County of Albany

Carmen Mottolese, 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 23rd day of August, 1976, she served the within

Notice of Determination by ~~certified~~ mail upon Richard Atwell, In--  
Individually and as an  
LIQUORS, INC. ~~(representative of the)~~ officer, & URBAN  
the petitioner in the within proceeding,

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

as follows: Richard Atwell, Individually and  
as an officer, &

Urban Liquors, Inc.

354 Saratoga Avenue

Brooklyn, New York 11233

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

23rd day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

URBAN LIQUORS, INC. & <sup>of</sup> RICHARD ATWELL,  
Individually and as an officer

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 and 29 of the :  
Tax Law for the Year(s) or Period(s) :  
March 1, 1972 through February 28, 1975

State of New York  
County of Albany

Carmen Mottolese, 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 23rd day of August, 19 76 she served the within  
Notice of Determination by ~~certified~~ mail upon URBAN LIQUORS, INC. &  
an officer ~~(representative of)~~ the petitioner in the within proceeding, RICHARD ATWELL, In-  
dividually and as  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: URBAN LIQUORS, INC., &  
Richard Atwell, Individually  
and as an officer  
354 Saratoga Avenue  
Brooklyn, New York 11233  
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

23rd day of August 23, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

August 23, 1976

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

Urban Liquors, Inc., &  
Richard Atwell, Individually  
and as an officer  
354 Saratoga Avenue  
Brooklyn, New York 11233

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 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: ~~Taxing Bureau's Representative~~

Taxing Bureau's Representative:



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

August 23, 1976

TELEPHONE: (518) 457-3850

Richard Atwell, Individually and  
as an officer, &  
Urban Liquors, Inc.  
354 Saratoga Avenue  
Brooklyn, New York

Dear Mr. Atwell:

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**  
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Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
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hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

Enc.

Paul B. Coburn  
Supervising Tax  
Hearing Officer

cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
URBAN LIQUORS, INC.	:	DETERMINATION
&	:	
RICHARD ATWELL,	:	
Individually and as an officer	:	
	:	
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 March 1, 1972 through	:	
February 28, 1975.	:	

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Applicants, Urban Liquors, Inc., and Richard Atwell, individually and as an officer, 354 Saratoga Avenue, Brooklyn, New York 11233, have filed an application for revision of a determination or for a refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1972 through February 28, 1975. (Notice No. 90,757,069).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 26, 1976 at 1:20 p.m. Applicant, Richard Atwell, appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Solomon Sies, Esq. of counsel).

ISSUE

Was additional sales tax due from applicants, Urban Liquors, Inc. and Richard Atwell, individually and as an officer, for the period March 1, 1972 through February 28, 1975?

FINDINGS OF FACT

1. Applicant, Urban Liquors, Inc., filed New York State and local sales and use tax returns for the period March 1, 1972 through February 28, 1975.

2. On May 9, 1975, applicant, Urban Liquors, Inc., consented to extending the statute of limitations for assessment of sales and use taxes for the periods in issue under Articles 28 and 29 of the Tax Law through March 20, 1976.

3. On September 18, 1975, as a result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period March 1, 1972 through February 28, 1975 in the sum of \$8,769.64 plus penalty and interest of \$2,932.69 for a total of \$11,702.33.

4. Applicant, Urban Liquors, Inc., operated a retail liquor store at 354 Saratoga Avenue, Brooklyn, New York 11233 during the period March 1, 1972 through February 28, 1975. Richard P. Atwell, its president and sole owner, hired a manager and two clerks to run the establishment. He was the only active and responsible officer of the corporation during the period at issue.

5. An audit of applicant, Urban Liquors, Inc., on April 30, 1975, by the Sales Tax Bureau, indicated that gross sales as per its records were greater than sales reported. Pursuant to a markup test of thirty percent, a percentage found on audit to be its average markup, it was estimated that there was a margin of error of twenty-five percent on the reported sales.

Analysis of purchases agreed with purchases as recorded.

Sales per mark up test (4/30/75)	\$2,012.00
Purchases per test	<u>1,548.00</u>
Profit	\$ 464.00

$$\frac{464}{1,548} = 30\% \text{ mark up}$$

Total purchases per audit period	\$470,452.00
Plus mark up of 30%	<u>141,136.00</u>
Adjusted taxable sales	611,588.00
Less reported sales	<u>489,059.00</u>

Total additional taxable sales per audit period	\$122,529.00
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Additional sales	<u>\$122,529</u>	= 25% error
Reported sales	\$489,059	

6. The determination of additional taxable sales and resulting sales tax for the period March 1, 1972 through February 28, 1975 were based upon substantial findings of fact in the course of a field audit of applicant, Urban Liquors, Inc.'s, books and records. The Sales Tax Bureau, in arriving at its determination, followed generally accepted procedures and tests consistent with the nature of the business operations and available records. Applicant,

Urban Liquors, Inc., has failed to submit documentary or other sufficient evidence to disprove the Sales Tax Bureau's determination of taxable sales or the computation of sales tax due.

CONCLUSIONS OF LAW

A. That the examination of applicant, Urban Liquors, Inc.'s, books and records by the Sales Tax Bureau was properly conducted and the resulting findings as to the amount of additional sales tax due for the period March 1, 1972 through February 28, 1975, were supported by substantial evidence.


B. That the application of Urban Liquors and Richard Atwell, individually and as an officer, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 18, 1975, is sustained.

DATED: Albany, New York  
August 23, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER