

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.

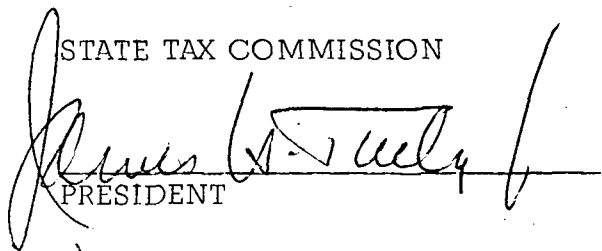
CONCLUSIONS OF LAW


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.

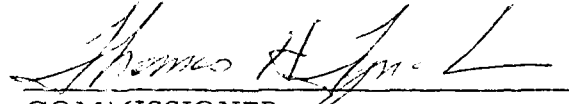
B. That the application of Urban Liquors and Richard Atwell, individually and as an officer, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 18, 1975, is sustained.

DATED: Albany, New York  
August 23, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER