

TAB

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
TRAIL HOUSE LTD. d/b/a :
BULLS HEAD INN :
: DETERMINATION
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 September 1, 1968 through :
August 31, 1971. :
:

Applicant, Trail House Ltd., d/b/a Bulls Head Inn (hereinafter referred to as "Bulls Head Inn"), Sara Wells Trail, Campbell Hall, New York, has 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 September 1, 1968 through August 31, 1971. A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 7, 1974, at 10:00 A.M. Applicant appeared by Herbert L. Ruttenberg, Esq. The Sales Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq. of counsel).

ISSUE

Was additional sales tax due from applicant, Bulls Head Inn, for the periods September 1, 1968 through August 31, 1971?

FINDINGS OF FACT

1. Applicant, Bulls Head Inn, filed New York State and local sales and use tax returns for the periods September 1, 1968 through August 31, 1971.

2. On September 15, 1972, as a result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Bulls Head Inn, for additional sales tax due for the periods September 1, 1968 through August 31, 1971, in the sum of \$1,128.73 plus penalty and/or interest of \$338.96.

3. The determination of additional taxable sales and resulting sales tax for the periods from September 1, 1968 through August 31, 1971, were based upon a computed mark-up of 344.28 percent to liquor purchases. The Sales Tax Bureau in its audit computed the average drink as containing one and one quarter ounces of liquor. This was an estimated amount, not based upon actual observation of the operation of the premises.

4. Applicant, Bulls Head Inn, operated a restaurant and bar on the Sara Wells Trail, Campbell Hall, New York, during the periods September 1, 1968 through August 31, 1971. The restaurant was located in a rural area on a country road. The restaurant was noted for its food and the size of the drinks it served. Its patrons were primarily local people. The drinks at applicant, Bulls Head Inn, were poured

free hand, that is, without the use of a measuring instrument.

The average drink contained two and one quarter ounces of liquor.

5. Applicant, Bulls Head Inn's mark-up on purchases relating to the sale of liquor during the periods September 1, 1968 through August 31, 1971, was 290 percent.

6. The effective sales tax rates applicable to applicant, Bulls Head Inn's sales of food and beverages was two percent from September, 1968 through May 31, 1969, three percent from May 31, 1969 through May 31, 1971, and four percent from May 31, 1971 through August 31, 1971.

7. The amount of additional sales tax due from applicant, Bulls Head Inn, after allowing for sales tax paid by it on account of its sales tax liabilities was \$366.44 for the periods September 1, 1968 through August 31, 1971.

CONCLUSIONS OF LAW

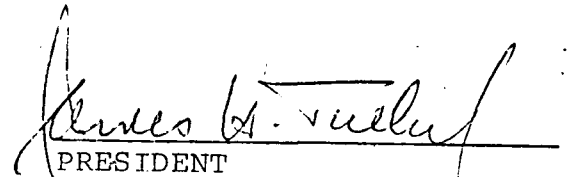
A. That the applicant, Bulls Head Inn, presented documentary and substantial evidence to prove that an average drink contained two and one quarter ounces of liquor and there their mark-up on purchases relating to liquor sales was 290 percent.

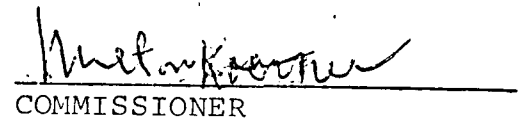
B. That the application of Bulls Head Inn is granted to the extent of reducing additional sales tax due for the periods September 1, 1968 through August 31, 1971, from \$1,128.73 to \$366.44 together

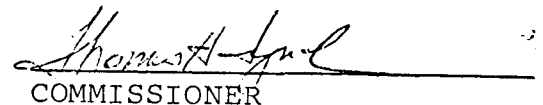
with such interest as may be lawfully due. The Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for payment of sales and use taxes due, dated September 15, 1972; and except as so granted the application is in all other respects denied.

DATED: Albany, New York
March 8, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER