

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ESTATE OF JAY STONE : AFFIDAVIT OF MAILING  
and DORIS STONE d/b/a SPORTSMAN INN :  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
8/31/70-7/31/71 & 8/1/71-5/31/73.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 21st day of December , 1976 , ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Estate of Jay Stone and  
Doris Stone ~~(representative of the)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Estate of Jay Stone and Doris Stone  
d/b/a Sportsman Inn  
35 John Street  
Hudson Falls, New York  
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)~~  
~~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 December , 1976

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ESTATE OF JAY STONE :  
and DORIS STONE d/b/a SPORTSMAN INN : AFFIDAVIT OF MAILING  
For a Redetermination of a Deficiency or :  
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Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
8/31/70-7/31/71 & 8/1/71-5/31/73.

State of New York  
County of Albany

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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 21st day of December , 1976, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Francis W. DeCamilla

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Francis W. DeCamilla, Esq.  
214 Main Street  
Hudson Falls, New York

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 December , 1976.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

December 21, 1976

TELEPHONE: (518) **437-3850**

Estate of Jay Stone and Doris Stone  
d/b/a Sportsman Inn  
35 John Street  
Hudson Falls, New York

Dear Mrs. Stone:

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

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

*Frank J. Puccia*

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

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 :

ESTATE OF JAY STONE :  
d/b/a SPORTSMAN INN :

for Revision of a Determination or for Refund :  
of Sales & Use Taxes under Articles 28 and 29 of :  
the Tax Law for the Period 8/31/70 - 7/31/71 :

DETERMINATION

AND :

In the Matter of the Application :

of :

DORIS STONE :  
d/b/a SPORTSMAN INN :

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 8/1/71 - 5/31/73. :

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Applicants, Estate of Jay Stone d/b/a Sportsman Inn and Doris Stone d/b/a Sportsman Inn, 35 John Street, Hudson Falls, New York, have 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 August 31, 1970 through July 31, 1971 and August 1, 1971 through May 31, 1973 respectively. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on June 14, 1976 at 9:15 A.M. Applicants appeared by Francis W. DeCamilla, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Solomon Sies, Esq. of counsel).

#### ISSUE

Did the markup techniques used by the Sales Tax Bureau properly reflect the applicants taxable sales?



FINDINGS OF FACT

1. Applicants, Estate of Jay Stone d/b/a Sportsman Inn and Doris Stone d/b/a Sportsman Inn, have filed New York State and local sales and use tax returns for the periods June 1, 1970 through July 31, 1971, and August 1, 1971 through May 31, 1973 respectively.

2. On March 15, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use taxes due against Doris Stone d/b/a Sportsman Inn for the period August 1, 1971 through May 31, 1973. The tax due of \$4,036.60 under Notice Number 90,751,990 was determined per a field audit.

3. On May 3, 1974, the Sales Tax Bureau issued a Notice and Demand for payment of sales and use taxes due against Doris Stone, Executrix, Estate of John Stone d/b/a Sportsman Inn, for the period June 1, 1970 through November 30, 1971. The tax due under Notice Number 90,733,859 was \$2,688.39 and was determined per a field audit.

4. On April 1, 1974 and May 23, 1974, applicant, Doris Stone, filed applications requesting a hearing pursuant to section 1138 of the New York State Tax Law.

5. Applicants, Estate of Jay Stone and Doris B. Stone, d/b/a Sportsman Inn, operated a neighborhood tavern in Hudson Falls, New York. Its patrons were primarily local neighborhood people. During the audit period, Mrs. Doris Stone worked behind the bar and had one full time employee. Mrs. Stone was frequently ill during this period and on these occasions, employed one other person to fulfil her responsibilities. During the period of her illness, her friends would also help tend the bar.

6. The applicant, Mrs. Doris Stone, representing Doris Stone d/b/a Sportsman Inn and as Executrix of the Estate of Jay Stone d/b/a Sportsman Inn, appeared for a conference at the Albany District Office on May 23, 1974. This conference resulted in adjusted taxes due of \$2,953.77 and \$1,564.48 under Notice Numbers 90,751,990 and 90,733,859 respectively. The conference had the effects of a reaudit and was conducted in the following manner:

Selling prices were obtained from applicant, Mrs. Doris Stone, for all alcoholic beverages sold. The selling prices obtained at this conference and used in the computation of adjusted tax due are the correct selling prices as evidenced by a price list submitted at this hearing. The liquor and beer purchases were recorded by the Sales Tax Bureau for March, April and May, 1973. The liquor purchases were reduced by 15% as an allowance for spillage. No adjustment for spillage was made for beer purchases as only bottled beer was sold. The Sales Tax Bureau, in its markup, computed the average drink as containing one ounce of liquor. By using all these factors the Sales Tax Bureau arrived at a markup of 230% for liquor and 185% for beer.

7. The applicant, Doris B. Stone, contended that during her periods of illness, although the business remained open, the receipts were noticeably less than for those periods when she was present, and that she should not be liable for projected sales.

8. The audit of the applicants' books and records and the resulting findings follows generally accepted audit procedures consistent with the nature of the business operation and available records.

#### CONCLUSIONS OF LAW

A. That the examination of applicants, Estate of J. Stone d/b/a Sportsman Inn and Doris B. Stone d/b/a Sportsman Inn's books and records by the Sales Tax

Bureau was properly conducted and the resulting findings as to the amounts of additional sales tax due for the periods June 1, 1970 through May 31, 1973 were supported by substantial evidence.

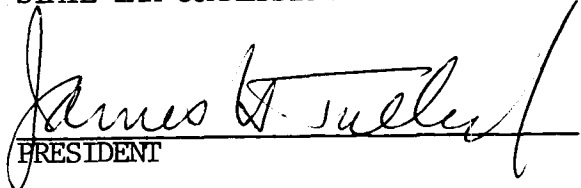
B. That the application of Estate of J. Stone d/b/a Sportsman Inn is denied and the Notice and Demand issued May 3, 1974 and revised per a conference which resulted in a tax due of \$1,564.48 is sustained.

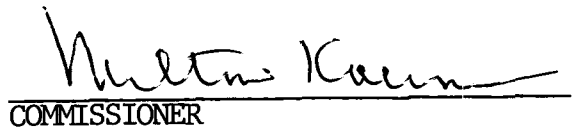
C. That the application of Doris B. Stone d/b/a Sportsman Inn is denied and the Notice of Determination and Demand issued March 15, 1974 and adjusted on July 8, 1974 in the amount of \$2,953.77 is sustained.


D. That the applicant acted in good faith and all penalties are cancelled.

DATED: Albany, New York  
December 21, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER