

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HARRIGAN'S WINES - LIQUORS
(Robert Erwig and Geraldine Parry, Partners)

AFFIDAVIT OF MAILING

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 ~~XXXXXX~~ Period(s)
March 1, 1972 through November 30, 1975.

State of New York
County of Albany

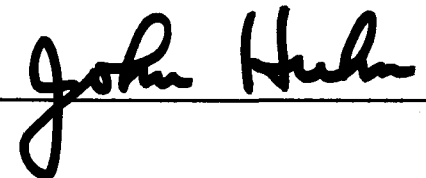
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of September, 1978, he served the within
Notice of Determination by (~~XXXXXXXXXX~~) mail upon Harrigan's Wines - Liquors
Partners) (~~XXXXXXXXXXXXXXXXXX~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Harrigan's Wines - Liquors
as follows: (Robert Erwig and Geraldine Parry, Partners)
53 South Main Street
Freeport, New York 11520

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
20th day of September, 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

Area Code 518 (457-1723)

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

September 20, 1978

Horrigan's Wines - Liqueurs
(Robert Erwig and Geraldine Parry, Partners)
53 South Main Street
Freeport, New York 11520

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


JOSEPH CHIRIVASI
Hearing Examiner

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
HORRIGAN'S WINES - LIQUORS : DETERMINATION
(Robert Erwig and Geraldine Parry, Partners) :
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 :
November 30, 1975. :

Applicant, Horrigan's Wines - Liquors (Robert Erwig and Geraldine Parry, Partners), 53 South Main Street, Freeport, New York 11520, 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 period March 1, 1972 through November 30, 1975 (File No. 15261).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 30, 1977. Applicant appeared by Robert Erwig, partner. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq. and Irving Atkins, Esq., of counsel).

ISSUE

Whether the results of an audit by the Sales Tax Bureau of applicant's books and records for the period March 1, 1972 through November 30, 1975 properly reflected applicant's additional sales tax liability.

FINDINGS OF FACT

1. Applicant, Horrigan's Wines - Liquors (Robert Erwig and Geraldine Parry, Partners), operated a retail liquor store at 53 South Main Street, Freeport, New York 11520, and filed New York state and local sales tax returns for the period March 1, 1972 through November 30, 1975.

2. On May 27, 1976 as the result of an audit of applicant's books and records, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period March 1, 1972 through November 30, 1975 for taxes due of \$1,118.95, plus penalty and interest.

3. The audit findings were arrived at as follows:

(a) An analysis of purchases of wines and liquors for April and May of 1974 revealed the following percentages:

Wine purchases	\$ 9,581.10	=	19.29%
Liquor purchases	40,098.34	=	<u>80.71%</u>
Total purchases	<u>\$49,679.44</u>		<u>100.00%</u>

(b) Mark-up tests were performed on selected individual bottles of wines and liquors to arrive at the following mark-up percentages:

Wine - May 9, 1975 shelf prices compared to March, 1975 purchase invoice costs revealed a wine mark-up of 47.211%.

Liquor - June 2, 1975 shelf prices compared to May, 1975 purchase invoice costs revealed a liquor mark-up of 12.355%.

(c) The sales tax examiner applied the respective allocation percentages and mark-up percentages to purchases per records for the entire audit period, to arrive at a 1.245% under-reporting margin of error on reported taxable sales.

(d) The application of this margin of error of 1.245% to reported taxable sales for the audit period resulted in additional taxable sales of \$15,788.00 and additional sales tax due of \$1,104.95.

(e) Two hundred dollars (\$200.00) worth of tangible personal property was found to have been acquired without tax having been paid (period ended May 31, 1973). A compensating use tax was assessed in the amount of \$14.00.

(f) The above resulted in total additional tax due of \$1,118.95, plus statutory penalty and interest.

4. Applicant argued that the mark-up tests were inequitable in that no consideration was given to applicant's business activities as to occasional sales wherein wine and liquor were sold at less than the shelf prices which were tested, i.e., the sale of case lots of wine at a 10% discount.

5. The applicant made sales at less than shelf prices during the period March 1, 1972 through November 30, 1975.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau's projected computation of additional taxable sales based on a margin of error of 1.245% did not give adequate consideration to the applicant's business activities as set forth in Finding of Fact "5" and, therefore, does not properly reflect the additional sales tax due.

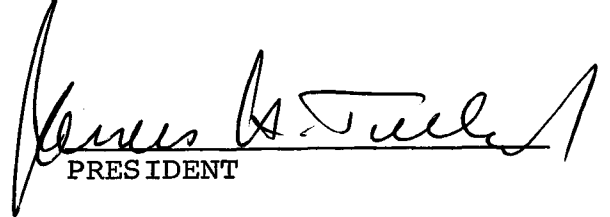
B. That the application of Horrigan's Wines - Liquors (Robert Erwig and Geraldine Parry, Partners) is granted to the extent of reducing the additional taxes due for the period March 1, 1972 through November 30, 1975 from \$1,118.95 to \$14.00, together with interest at the minimum statutory rate; that the Sales Tax Bureau is hereby directed to accordingly modify the

Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 27, 1976, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER