

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
KARL MC LAURIN d/b/a
TIJUANA RESTAURANT

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~~) :
September 1, 1969 through August 31, 1972

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 13 day of October, 1978, he served the within
Notice of Determination by (~~xxxxxx~~) mail upon Karl McLaurin
d/b/a Tijuana Restaurant

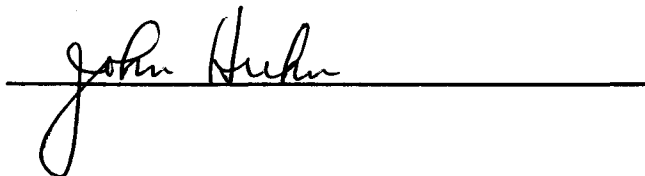
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Karl McLaurin
d/b/a Tijuana Restaurant
185 West Florence St.
Syracuse, NY 13207
and by depositing same enclosed in a postpaid properly addressed 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~~
~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

13 day of October, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
KARL MC LAURIN d/b/a
TIJUANA RESTAURANT

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 ~~years~~ Period ~~(s)~~ :
September 1, 1969 through August 31, 1972

State of New York
County of Albany

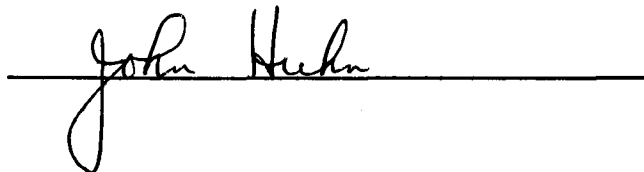
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of October , 1978, she served the within
Notice of Determination by ~~(certified)~~ mail upon Sheldon Kall, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sheldon Kall, CPA
3522 James Street
Syracuse, NY 13026
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

13 day of October , 1978.







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

October 13, 1978

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

**Karl Molaurin
d/b/a Tijuana Restaurant
185 West Florence Street
Syracuse, NY 13207**

Dear Mr. Molaurin:

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 Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
KARL MC LAURIN d/b/a	:	DETERMINATION
TIJUANA RESTAURANT	:	
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 September 1, 1969 through	:	
August 31, 1972.	:	

Applicant, Karl McLaurin d/b/a Tijuana Restaurant, 185 West Florence Street, Syracuse, New York 13207, 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 September 1, 1969 through August 31, 1972 (File No. 14152).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 25, 1977 at 1:15 P.M. Applicant appeared by Sheldon Kall, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether applicant was a person required to collect sales tax and was personally liable for such tax in accordance with sections 1131(1) and 1133(a) of the Tax Law.

II. Whether applicant was entitled to a refund for sales tax paid for the period December 1, 1971 through August 31, 1972.

FINDINGS OF FACT

1. Applicant, Karl McLaurin, was listed as vendor on the sales tax returns of Tijuana Restaurant located at 700 South Avenue, Syracuse, New York.

2. On February 20, 1975, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against the applicant, Karl McLaurin, for sales tax due in the sum of \$3,432.68 for the period September 1, 1969 through August 31, 1972. This was done on the grounds that he was personally liable as owner of Tijuana Restaurant for sales tax due in accordance with sections 1131(1) and 1133 of the Tax Law. This Notice and Demand was based on sales tax returns filed under the name of Tijuana Restaurant and containing the signature of Karl McLaurin.

3. On February 28, 1975, applicant filed an Application for Credit or Refund of State and Local Sales or Use Tax with the Sales Tax Bureau, claiming a refund for sales tax paid by him for the period December 1, 1971 through August 31, 1972. In accordance

with his application for refund, applicant contended that he was the owner in name only and not the proper person required to collect sales tax.

4. On July 31, 1975, the Sales Tax Bureau disallowed applicant's claim for refund. On August 13, 1975, applicant filed an application for a hearing.

5. Sales tax returns for the period December 1, 1968 through August 31, 1971 were filed on October 22, 1971. Applicant's name was signed at the place for the "signature of vendor", but he claimed that Lamar Lee signed the name Karl McLaurin on these sales tax returns. Sales tax returns for the period September 1, 1971 through November 30, 1972 were filed with the Sales Tax Bureau on March 23, 1973. These forms listed the name of the business as "Karl McLaurin d/b/a Tijuana Restaurant." Applicant admitted signing this set of returns, but he claimed he did so on the advice of the Sales Tax Bureau. The total tax reported on all the above returns was \$5,152.03. On October 1, 1973, applicant filed a petition in bankruptcy in the United States District Court for the Northern District of New York.

6. Applicant, Karl McLaurin, made payments of \$1,490.85 which were applied to the sales tax shown to be due on the returns

of Tijuana Restaurant. Dividends from bankruptcy in the sum of \$228.50 were also applied to the tax due shown on the above returns, leaving a tax balance due of \$3,432.68.

7. Applicant, Karl McLaurin, contended that the true owner of Tijuana Restaurant was Lamar Lee, his brother-in-law, and that the business was in applicant's name because Lamar Lee had a prior criminal conviction which precluded him from acquiring a liquor license. Applicant also contended that the only money he contributed to the business was an advancement for the liquor license, for which he was reimbursed. Applicant claimed that he did not work for nor did he derive any profits or benefits from the business, and that the operation of the business was conducted by Lamar Lee.

8. Applicant introduced a letter from the Assistant District Supervisor of the New York State Department of Labor explaining that according to Department records, Lamar Lee "appeared to be the operator of the business."

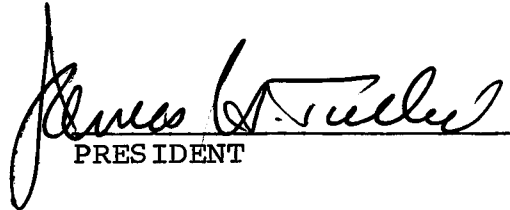
CONCLUSIONS OF LAW

A. That applicant, Karl McLaurin, failed to sustain the burden of proof required to show that he was not a person required to collect tax in accordance with the meaning and intent of section 1131(1) of the Tax Law. That applicant was personally liable for the tax imposed, collected, or required to be collected as provided in section 1133(a) of the Tax Law.


B. That the application of Karl McLaurin d/b/a Tijuana Restaurant is denied and the denial of refund issued July 31, 1975 is sustained.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER