

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DENOS VOURDERIS d/b/a

STEPHEN'S COFFEE SHOP

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law. ~~For the Year(s) and Period(s)~~ :

AFFIDAVIT OF MAILING

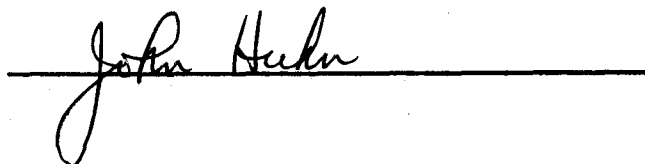
State of New York
County of Albany

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 25th day of August , 1978, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Denos Vourderis d/b/a
Stephen's Coffee Shop ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Denos Vourderis d/b/a
Stephen's Coffee Shop
21-69 49th Street
Astoria, New York 11102
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

25th day of August , 1978.



STATE OF NEW YORK
STATE TAX COMMISSION

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DENOS VOURDERIS d/b/a

STEPHEN'S COFFEE SHOP

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
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Taxes under Article(s) 28 & 29 of the
Tax Law, ~~for the Year(s) or Period(s)~~

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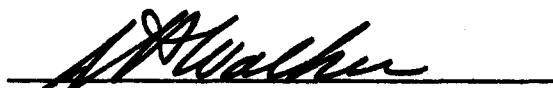
State of New York
County of Albany

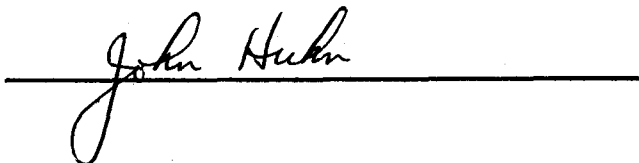
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August, 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon John J. Tormey
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John J. Tormey, Esq.
Brown and Tormey
153-37 Hillside Avenue
Jamaica, New York 11432
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

25th day of August, 1978.







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

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

August 25, 1978

**Demos Vourderis d/b/a
Stephen's Coffee Shop
21-69 49th Street
Astoria, New York 11102**

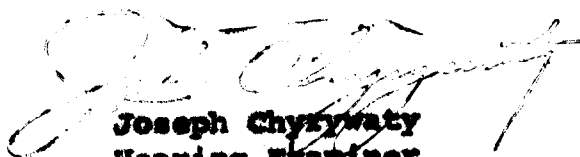
Dear Mr. Vourderis:

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 Applications	:	
of	:	
DENOS VOURDERIS d/b/a	:	
STEPHEN'S COFFEE SHOP	:	DETERMINATION
for Revision of Determinations or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law.	:	

Applicant, Denos Vourderis, d/b/a Stephen's Coffee Shop, 21-69 49th Street, Astoria, New York 11102, filed applications for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law pursuant to Notices #90,733,214 and #90,734,664 (File No. 00416).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 11, 1977 at 9:15 A.M. Applicant appeared by Brown and Tormey, Esqs. (John J. Tormey, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. If a lien creditor has repossessed the tangible personal property covered by a security agreement, whether such repossession is subject to sales tax.

II. If the lien creditor does not resell the business after acquiring title at the foreclosure sale, but continues to operate the business using the fixtures in connection therewith, whether he is liable for sales tax on the acquisition of the aforesaid fixtures.

III. What was the consideration paid for such transfer.

FINDINGS OF FACT

1. On March 20, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice #90,733,214) against applicant, Denos Vourderis d/b/a Stephen's Coffee Shop, for \$210.00, plus penalty and interest of \$21.00, for a total due of \$231.00, based on a repossession of fixtures and equipment from Rook Restaurant, Inc. The Sales Tax Bureau estimated the value of the fixtures and equipment to be \$3,000.00, since applicant failed to reply to its request for additional information. Applicant filed a timely protest in connection with the above determination.

2. On September 27, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice #90,734,664) against Denos Vourderis d/b/a Stephen's Coffee Shop, for \$210.00, plus penalty and interest of \$46.20, indicating a total due of \$247.20 (should apparently be \$256.20), based on a repossession of fixtures and equipment from Cervone Restaurant Corp. The Sales Tax Bureau estimated the value of the fixtures and equipment to be \$3,000.00, since applicant failed to reply to its request for additional information. Applicant filed a timely protest in connection with said determination.

3. Applicant, Denos Vourderis, operated a restaurant under the name of Stephen's Coffee Shop at 89-62A 165th Street, Jamaica, New York, until November 24, 1972, at which time he sold the business to Rook Restaurant, Inc. The Notification of Sale, Transfer or Assignment in Bulk (ST-274) filed by the purchaser (Rook Restaurant, Inc.) stated that the total sale price was \$40,000.00 and the sale price of the fixtures and equipment was \$5,000.00. At the time of the sale, the purchaser executed a series of promissory notes, as well as a security agreement. The notes were payable monthly for the balance of the purchase price. Applicant filed the purchase money security agreement. Several months after the sale, the purchaser defaulted in the payment of the notes. Applicant instituted legal proceedings for the repossession of the premises and foreclosure of the security lien. On June 26, 1973 at an auction sale by the City Marshall, applicant was the successful bidder (\$1.00) at the foreclosure sale. Applicant decided to re-open the premises and continue to operate the business using the fixtures and equipment, until a second purchaser could be obtained.

4. On July 3, 1973, applicant again sold the aforementioned restaurant (including the fixtures and equipment) to Cervone Restaurant Corp. The Notification of Sale, Transfer or Assignment in Bulk (ST-274) filed by the purchaser (Cervone Restaurant Corp.) stated that the total sale price was \$32,000.00 and the sale price of the fixtures and equipment was \$3,000.00. As part of the purchase price, the

purchaser executed a series of promissory notes and a security agreement. The applicant filed the purchase money security agreement. After several months, Cervone Restaurant Corp. defaulted in the payment of the outstanding notes. Applicant then instituted legal proceedings for repossession of the premises and foreclosure of his creditor's lien. Applicant was the successful bidder (\$1.00) at the public auction sale presided over by a City Marshall of the City of New York. Prior to the auction sale, applicant discovered that many of the chattels and assets of the restaurant (including glassware and silverware) were removed from the premises. Applicant re-opened the premises and continued to operate the restaurant until he was able to obtain a third purchaser in June of 1974. Applicant again sold the restaurant with the fixtures and equipment to Psaropoula Restaurant Corp. on June 28, 1974.

5. Applicant failed to present any evidence that the unpaid balance of principal and interest under the security agreement was less than \$3,000.00 with respect to the repossession of the fixtures and equipment from Rook Restaurant, Inc.

6. Applicant received payments in the sum of \$1,400.00 from Cervone Restaurant Corp. as partial compensation for the fixtures and equipment, leaving an unpaid balance of \$1,750.00 which included principal and interest.

CONCLUSIONS OF LAW

A. That the operation of the business by applicant as set forth in Findings of Fact "3" and "4", supra, negates an intent to resell the fixtures and equipment, but rather shows an intent to purchase the same for use in the operation of applicant's business.

B. That the repossession by applicant of the fixtures and equipment constituted a sale within the intent and meaning of section 1101(b)(5) of the Tax Law.

C. That the consideration paid for a transfer under a repossession is the unpaid balance of principal and interest under the mortgage, plus the additional compensation (if any), paid by the mortgagee for the transfer.

D. That the acquisitions by applicant of the fixtures and equipment as more fully set forth in Findings of Fact "3" and "4" constituted a taxable sale at retail within the intent and meaning of section 1101(b)(4) of the Tax Law.

E. That in accordance with Conclusion of Law "C", the amount subject to tax under Notice #90,734,664 is \$1,751.00. The Sales Tax Bureau is directed to recompute the tax due in accordance herewith.

F. That the application of Denos Vourderis is granted to the extent indicated in Conclusion of Law "E", but is in all other respects denied.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER