

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Brown :
d/b/a Brown's Liquor Store : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 4/1/74-8/31/75. :

State of New York
County of Albany

Jay Vredenburg, 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 14th day of December, 1979, he served the within notice of Determination by mail upon William Brown, d/b/a Brown's Liquor Store, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Brown
d/b/a Brown's Liquor Store
198 Lewis Ave.
Brooklyn, NY 11221

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of December, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Brown :
d/b/a Brown's Liquor Store : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 4/1/74-8/31/75. :

State of New York
County of Albany

Jay Vredenburg, 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 14th day of December, 1979, he served the within notice of Determination by mail upon Sydney K. Rosenthal the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Sydney K. Rosenthal
194-10F 64th Circle
Fresh Meadows, NY 11365

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
14th day of December, 1979.

Joanne Knapp

J. Vredenburg

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

December 14, 1979

William Brown
d/b/a Brown's Liquor Store
198 Lewis Ave.
Brooklyn, NY 11221

Dear Mr. Brown:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sydney K. Rosenthal
194-10F 64th Circle
Fresh Meadows, NY 11365
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WILLIAM BROWN	:	DETERMINATION
d/b/a BROWN'S LIQUOR STORE	:	
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 April 1, 1974	:	
through August 31, 1975.	:	

Applicant, William Brown d/b/a Brown's Liquor Store, 198 Lewis Avenue, Brooklyn, New York 11221, 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 April 1, 1974 through August 31, 1975 (File No. 15247).

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 25, 1978 at 1:15 P.M. Applicant appeared by Sydney K. Rosenthal, Accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against the applicant was proper.

II. Whether the results of an audit by the Audit Division of applicant's books and records for the period April 1, 1974 through August 31, 1975 properly reflected applicant's additional tax liability.

FINDINGS OF FACT

1. Applicant, William Brown d/b/a Brown's Liquor Store, operated a retail liquor store at 198 Lewis Avenue, Brooklyn, New York 11221. Applicant

filed New York State and local sales and use tax returns for the period April 1, 1974 through August 31, 1975. Applicant commenced business on April 1, 1974, in a previously unoccupied store.

2. On April 21, 1976, as the result of an audit of applicant's books and records for the period April 1, 1974 through August 31, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period May 31, 1974 through August 31, 1975. However, the notice also stated that "The tax stated below is for the period 9/1/74 to 8/31/75". (The Audit Division's file copy in evidence indicates a pen and ink correction to "4/1/74 to 8/31/75").

3. The audit findings were arrived at, in accordance with established audit procedures of the Audit Division, as follows:

- (a) The Auditor analyzed purchases of wines and liquors for the months of February and August 1975. This review revealed the following ratio of purchases:

Wine purchases	19.26 percent
Liquor purchases	<u>80.74 percent</u>
Total purchases	<u>100.00 percent</u>

- (b) Mark up tests were performed on wine and liquor purchases for the month of November 1975, which resulted in markups of 48.86 percent on wine costs and 25.17 percent on liquor costs.
- (c) The auditor applied the respective allocation percentages and markup percentages to purchases, per records, for the audit period April 1, 1974 through August 31, 1975, to arrive at adjusted taxable sales of \$273,129.00. This resulted in a 28.96 percent margin of error on reported taxable sales of \$211,789.00.

- (d) The application of this margin of error to reported taxable sales for the audit period resulted in additional taxable sales of \$61,340.00 and additional sales tax due of \$4,752.00.
- (e) Fixed assets valued at \$1,133.00 were found to have been acquired without tax having been paid (period ended May 31, 1974). A compensating use tax was assessed in the amount of \$79.31.
- (f) The above resulted in total additional tax due of \$4,831.31, plus statutory penalty and interest.

4. Applicants argued that:

- (a) If any tax is due, the assessment should be confined to the period September 1, 1974 through August 31, 1975 (see Findings of Fact "2").
- (b) The markup tests were inequitable in that no consideration was given for inventory build-up of a new business breakage, and that selling prices used in the markup tests must have included sales tax because the trade publication "Beverage Media" indicates lower suggested selling prices.

5. The applicant did not present any documentary or other evidence to support his contentions.

CONCLUSIONS OF LAW

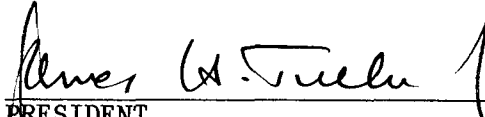
A. That the stated period "September 1, 1974 to August 31, 1975" on the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is inconsistent with the tax periods and tax shown to be due in the explanation section on said notice and on the audit worksheets; however, this discrepancy is a typographical error which does not change or nullify the assessed tax due for the period April 1, 1974 through August 31, 1975. The notice was proper according to section 1138(a) of the Tax Law.

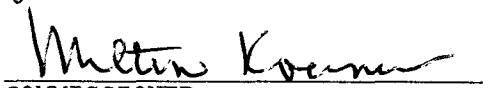
B. That the applicant has failed to disprove the correctness of the audit conducted by the Audit Division or the resulting computations and findings; and that the application of William Brown d/b/a Brown's Liquor Store is denied. The Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 21, 1976 is sustained.


DATED: Albany, New York

DEC 14 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER