

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ADELPHI THREE DINERS, INC.

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) :
June 1, 1970 through May 31, 1973.

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 6th day of February, 1978, He served the within

Notice of Determination by ~~certified~~ mail upon Adelphi Three Diners, Inc.

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Adelphi Three Diners, Inc.

1900 Hempstead Turnpike

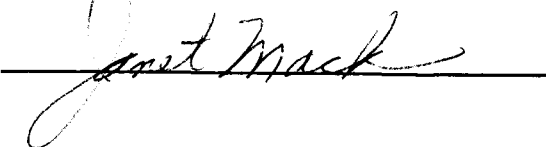
East Meadow, New York 11554

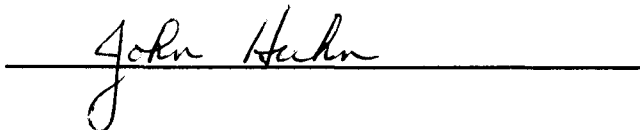
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 the)~~ petitioner.

Sworn to before me this

6th day of February, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ADELPHI THREE DINERS, INC.

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 ~~Year(s) XXX~~ Period ~~(s)~~ :
June 1, 1970 through May 31, 1973.

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 6th day of February , 1978 , she served the within
Notice of Determination by ~~registered~~ mail upon George L. Bourney, Esq.

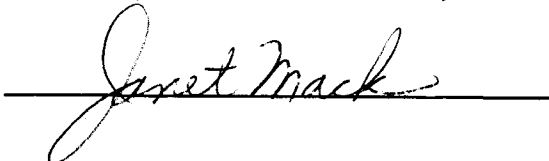
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: George L. Bourney, Esq.
115 Marlborough Road
West Hempstead, New York 11552

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

6th day of February , 19 78







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

February 6, 1978

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

Adelphi Three Diners, Inc.
1900 Hempstead Turnpike
East Meadow, New York 11554

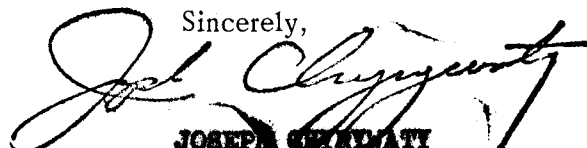
Gentlemen:

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 C. KWATY
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ADELPHI THREE DINERS, INC.	:	DETERMINATION
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	:	
June 1, 1970 through May 31, 1973.	:	

Applicant, Adelphi Three Diners, Inc., 1900 Hempstead Turnpike, East Meadow, New York 11554, 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 June 1, 1970 through May 31, 1973 (File No. 10012).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 21, 1977. Applicant appeared by George Dounias, accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether applicant, as the purchaser in a bulk sales transaction, notified the Sales Tax Bureau of the proposed sale as required by section 1141(c) of the Tax Law.

FINDINGS OF FACT

1. On June 4, 1973, applicant, Adelphi Three Diners, Inc., purchased certain business assets from Sage Brush Restaurants, Inc.

2. On November 20, 1973, in connection with said purchase, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes determined to be due from the seller, Sage Brush Restaurants, Inc., in accordance with the provisions of section 1141(c) of the Tax Law. The taxes determined to be due were \$23,241.00, plus penalty and interest of \$5,366.11, for a total due of \$28,607.11.

3. On May 29, 1973, the Sales Tax Bureau received a notice from applicant dated May 24, 1973 and entitled "To Creditors of Sage Brush Restaurants, Inc., Transferor". The notice gave the location and a general description of the property being transferred. It also stated that the transferee was to assume the payment of certain secured creditors and the rent in arrears of approximately \$45,000.00.

4. On June 11, 1973, the Sales Tax Bureau received a completed Form ST-274, "Notification of Sale, Transfer or Assignment in Bulk" from the seller's attorney. This form, dated June 5, 1973, indicated a scheduled date of sale of June 4, 1973.

5. The applicant contended that the Sales Tax Bureau was timely notified of the proposed sale in that the notice entitled "To Creditors of Sage Brush Restaurants, Inc., Transferor" dated May 24, 1973, was mailed on May 24, 1973.

CONCLUSIONS OF LAW

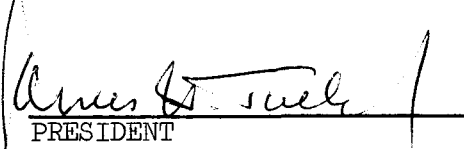
A. That section 1141(c) of the Tax Law provides that the purchaser "...shall at least ten days before taking possession of the subject of said sale...or paying therefore, notify the Tax Commission by registered mail of the proposed sale and of the price, terms and conditions thereof..."

B. That the applicant, Adelphi Three Diners, Inc., failed to sustain the burden of proof necessary to show that the Sales Tax Bureau was given proper and/or timely notice of the proposed sale as required by section 1141(c) of the Tax Law.

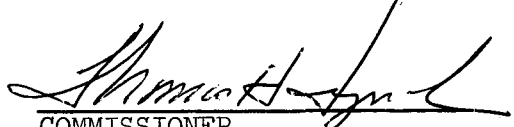
C. That the application of Adelphi Three Diners, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on November 20, 1973 is sustained.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER