

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mark Benes & George I. Hodor :
Chequers Cocktail Bar, Inc. : 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 6/1/72 - 2/28/74. :

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 11th day of January, 1980, he served the within notice of Determination by mail upon Mark Benes & George I. Hodor, Chequers Cocktail Bar, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark Benes & George I. Hodor
Chequers Cocktail Bar, Inc.
c/o Stephen A. Mishkin
Ossiningg, NY 10562

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mark Benes & George I. Hodor :
Chequers Cocktail Bar, Inc. : AFFIDAVIT OF MAILING
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under Article 28 & 29 of the Tax Law :
for the Period 6/1/72 - 2/28/74. :

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 11th day of January, 1980, he served the within notice of Determination by mail upon Thomas R. Langan 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. Thomas R. Langan
c/o Stephen A. Mishkin
100 S. Highland Ave., Park Professional Bldg.
Ossining, NY 10562

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

Mark Benes & George I. Hodor
Chequers Cocktail Bar, Inc.
c/o Stephen A. Mishkin
100 S. Highland Ave.
Ossiningg, NY 10562

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:

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
Thomas R. Langan
c/o Stephen A. Mishkin
100 S. Highland Ave., Park Professional Bldg.
Ossining, NY 10562
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MARK BENES AND GEORGE I. HODOR,	:	
AS OFFICERS OF	:	DETERMINATION
CHEQUERS COCKTAIL BAR, INC.	:	
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, 1972 through	:	
February 28, 1974.	:	

Applicants, Mark Benes and George I. Hodor, c/o Stephen A. Mishkin, Esq., 100 S. Highland Avenue, Ossining, New York 10562, 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, 1972 through February 28, 1974 (File No. 11785).

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 May 19, 1978. Applicants appeared by Thomas R. Langan, accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether Mark Benes and George I. Hodor are individually liable for the delinquent sales tax which was due from Chequers Cocktail Bar, Inc.

FINDINGS OF FACT

1. On November 5, 1975, the Sales Tax Bureau issued notices of determination and demand for payment of sales and use taxes due against Chequers Cocktail Bar, Inc. and Mark Benes and George I. Hodor, as responsible officers. The

notices which assessed tax due of \$5,783.13, plus penalty and interest, were the result of a Sales Tax Bureau audit of the books and records of Chequers Cocktail Bar, Inc. for the period June 1, 1972 through February 28, 1974.

2. On February 2, 1976, George I. Hodor and Mark Benes filed an application for a hearing to review the aforementioned notices.

3. Chequers Cocktail Bar, Inc. was incorporated prior to June 1, 1972 and operated as a bar until it closed during December of 1973. The officers of the corporation were:

Sanford Trontz	-	President
Allan Grabell	-	Vice-President
Mark Benes	-	Treasurer
George I. Hodor	-	Secretary

4. An agreement for the formation of Chequers Cocktail Bar, Inc. was entered into between applicants and Sanford Trontz and Allan Grabell on September 29, 1970. Said agreement provided the following:

(a) Each party was to contribute \$7,500.00, for which each would receive twenty-five shares of capital stock.

(b) Each of the parties would be stockholders, officers and directors of the corporation.

(c) Messrs. Trontz and Grabell would be the operating managers of the business, and each was to receive a weekly salary of \$200.00 plus increments if the sales and net income volume increased. Sanford Trontz and Allan Grabell were to devote their time, attention and energies to the business of the corporation, during a minimum of 35 hours a week.

(d) All corporate checks would be signed by any two officers.

5. Applicants contended that they relied on Sanford Trontz and Allan Grabell to manage and run all functions of the business of Chequers Cocktail Bar, Inc., and that they had resigned as officers and directors of Chequers Cocktail Bar, Inc., as of September 30, 1972.

6. During the period June 1, 1972 through February 28, 1974, the primary source of income of Mark Benes (dentist) and of George I. Hodor (dentist) was from a professional corporation known as Mark Benes and George Hodor, D.D.S., P.C.

CONCLUSIONS OF LAW

A. That applicants, Mark Benes and George I. Hodor, did not sustain the burden of proof required to establish that they were not "persons required to collect tax" and, therefore, not personally liable for the tax according to the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law.

B. That the application of Mark Benes and George I. Hodor is denied and the notices of determination and demand for payment of sales and use taxes due issued against them on November 5, 1975 are sustained.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER