

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Balint, Emil & Allred, Samuel :
d/b/a Balint & Allred Bar : 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 3/1/72 - 2/28/76. :

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 Balint, Emil & Allred, Samuel, d/b/a Balint & Allred Bar, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Balint, Emil & Allred, Samuel
d/b/a Balint & Allred Bar
47 Java St.
Brooklyn, NY 11223

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 :
Balint, Emil & Allred, Samuel :
d/b/a Balint & Allred Bar : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 3/1/72 - 2/28/76. :

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 Anthony Grosso 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. Anthony Grosso
2900 Hempstead Tpke.
Levittown, NY 11756

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

Balint, Emil & Allred, Samuel
d/b/a Balint & Allred Bar
47 Java St.
Brooklyn, NY 11223

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
Anthony Grosso
2900 Hempstead Tpke.
Levittown, NY 11756
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
EMIL BALINT and SAMUEL ALLRED, Co-Partners	:	DETERMINATION
d/b/a BALINT and ALLRED BAR	:	
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 March 1, 1972	:	
through February 28, 1976.	:	

Applicants, Emil Balint and Samuel Allred, Co-Partners, d/b/a Balint and Allred Bar, 47 Java Street, Brooklyn, New York 11223, 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 March 1, 1972 through February 28, 1976 (File No. 16397).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 19, 1979 at 9:15 A.M. Applicants appeared by Anthony Grosso, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau's determination of additional taxable sales and tax due thereon for the period March 1, 1972 through February 28, 1976, based upon estimated purchases, was correct.

FINDINGS OF FACT

1. On July 23, 1976, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants for tax due in the amount of \$8,644.39, plus penalty

and interest of \$3,331.28, for a total of \$11,975.67 for the period March 1, 1972 through February 28, 1976.

2. Applicants operated a neighborhood tavern located in the Greenpoint section of Brooklyn.

3. On March 21, 1975, the Sales Tax Bureau was scheduled to conduct an audit of applicants' books and records. The applicants, however, did not produce any records. The Sales Tax Bureau was unsuccessful in its attempt to obtain purchase information from applicants' suppliers. The Sales Tax Bureau then instructed the applicants to maintain records for one year.

When the Sales Tax Bureau returned to perform the audit, applicants supplied a day book for purchases and purchase invoices covering the period March 1, 1975 through February 28, 1976.

4. On audit, the Sales Tax Bureau, using the month of March 1975 as a test period, determined the following markup percentages: liquor - 264.12 percent, beer - 142.48 percent and cigars - 50 percent. The food markup was estimated to be 150 percent.

Applicants' day book showed purchases of liquor, beer, food and cigars in the amount of \$8,884.37. The Sales Tax Bureau increased said amount by 100 percent to arrive at audited purchases of \$17,768.14 for the period March 1, 1975 through February 28, 1976. This amount was used for each year under audit. The markup percentages were applied to purchases to determine audited taxable sales of \$207,964.60. Applicants reported taxable sales of \$93,492.80, leaving additional taxable sales in the amount of \$114,471.70 and tax due thereon of \$8,644.39.

5. Applicants contended that the purchases recorded in the day book were correct and that the Sales Tax Bureau's increase of 100 percent was arbitrary and unfounded. Applicants submitted at the hearing purchase invoices for

liquor, beer, food and cigars for the years 1972 and 1973, totaling \$7,028.81 and \$5,349.95, respectively. In addition, applicants submitted U.S. partnership returns for 1972 and 1973, indicating cost of goods sold in the amounts of \$6,697.00 and \$7,042.00, respectively. Merchandise purchases reported on U.S. individual income tax returns for 1976 and 1977 were \$8,728.00 and \$10,046.00.

All of said documents were introduced with the intent of showing that the purchases recorded in the day book were comparable to prior and subsequent years' purchases and therefore were accurate.

6. The aforesaid records were not made available to the Sales Tax Bureau.

7. Applicants' purchases of liquor, beer, food and cigars for the period at issue are more accurately comprised of the following:

<u>Period</u>	<u>Amount</u>	<u>Basis</u>
3/1/72 to 12/31/72	\$ 5,827	1972 purchase invoices \$7,028 10 month average
1/1/73 to 12/31/73	7,042	1973 U.S. Partnership Return
1/1/74 to 12/31/74	7,962	13 percent increase applied to 1973 purchases based on percentage of increase from 1976 - 1977
1/1/75 to 2/28/75	1,480	Monthly average 3/1/75 to 2/28/76
3/1/75 to 2/28/76	<u>8,884</u>	Day book
	<u>\$31,195</u>	

8. Applicants' sales and purchases records maintained for the period March 1, 1975 through February 28, 1976 disclosed a markup percentage on cost of 251 percent. Applicant reported sales of \$31,209.00 on New York State and local sales and use tax returns filed for said period.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau did not have reasonable cause to increase applicants' purchases by 100 percent for the period in which records were

maintained; therefore, the additional taxable sales determined, based upon such estimate, are incorrect. The records maintained by applicants for the period March 1, 1975 to February 28, 1976, showing purchases of \$8,884.37 and sales derived therefrom in the amount of \$31,209.00, accurately reflect the business activity for said period and that the returns filed for said period are correct.

B. That, in the absence of books and records for the prior periods under audit, applicants' sales are computed as follows:

Purchases (3/1/72 to 2/28/75)	\$22,311.00
Markup 251 percent	<u>56,000.00</u>
Sales	\$78,311.00
- Reported Sales (3/1/72 to 2/28/75)	<u>62,284.00</u>
Additional Taxable Sales	\$16,027.00

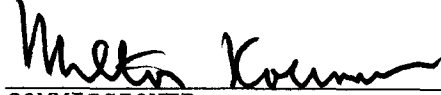
C. That the application of Emil Balint and Samuel Allred, Co-Partners, d/b/a Balint and Allred Bar is granted to the extent indicated in Conclusions of Law "A" and "B". The Sales Tax Bureau is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 23, 1976 and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER