

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALLEN C. EDWARDS

AFFIDAVIT OF MAILING

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 ~~Years~~ or Period(s) :
September 1, 1972 through August 31, 1975

State of New York
County of Albany

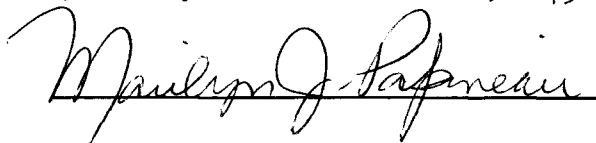
John Huhn , being duly sworn, deposes and says that
She is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of March , 1979 , she served the within
Notice of Determination by (~~certified~~) mail upon Allen C. Edwards
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Allen C. Edwards
575 Van Siclen Avenue
Brooklyn, NY 11207

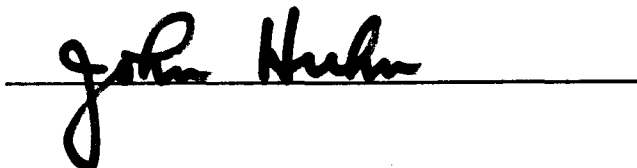
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

15th day of March , 1979.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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ALLEN C. EDWARDS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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September 1, 1972 through August 31, 1975

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 15th day of March , 1979 , she served the within
Notice of Determination by (~~certified~~) mail upon Bernard Brown
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Bernard Brown, Acct.
15 Park Row
New York, NY 10038
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

15th day of March , 1979.

Marilyn J. Papineau

John Huhn



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

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

March 15, 1979

Mr. Allen C. Edwards
575 Van Sicken Avenue
Brooklyn, NY 11207

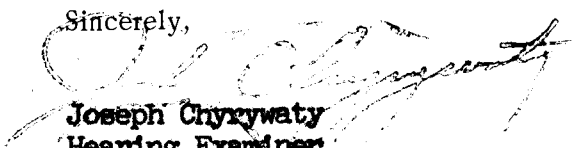
Dear Mr. Edwards:

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 Chyzywaty
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALLEN C. EDWARDS	:	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 September 1, 1972 through	:	
August 31, 1975.	:	

Applicant, Allen C. Edwards, 575 Van Siclen Avenue, Brooklyn, New York 11207, 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 September 1, 1972 through August 31, 1975 (File No. 12924).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1978 at 10:45 A.M. Applicant appeared by Bernard Brown, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether an audit of applicant's books and records by the Sales Tax Bureau properly reflected his additional sales tax liability for the period September 1, 1972 through August 31, 1975.

FINDINGS OF FACT

1. Applicant, Allen C. Edwards, filed New York state and local sales and use tax returns for the period September 1, 1972 through August 31, 1975.

2. On January 29, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Allen C. Edwards for the period September 1, 1972 through August 31, 1975. Said Notice was issued in accordance with the findings of an audit conducted by the Sales Tax Bureau which resulted in additional taxes due of \$12,151.26, plus penalty and interest.

3. Applicant signed a "Consent Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law" (ST-578) on October 27, 1975, extending the determination date for the taxable period September 1, 1972 through August 31, 1975 until September 20, 1976.

4. Applicant operated a retail wine and liquor store at 575 Van Siclen Avenue, Brooklyn, New York.

5. On audit, the Sales Tax Bureau compared bank deposits to sales reported on the sales tax returns filed. This comparison showed that bank deposits exceeded sales reported by \$84,817.00. Because of the discrepancy, a markup test was performed. Purchase invoices were analyzed for the month of September, 1975. The analysis showed that 30% of the purchases were wine and 70% were liquor. Purchases for September of 1975 were also used to determine individual markup percentages of 48.68% for wine and 28.28% for liquor.

The respective markup percentages were applied to purchases, after adjusting for an inventory increase, which resulted in audited sales of \$501,692.00. Applicant reported sales of \$338,140.00. The difference of \$163,552.00 was held as additional taxable sales. An error rate of 48.37% was computed by dividing additional taxable sales by reported taxable sales. The error rate applied to reported taxable sales for the period September 1, 1972 through August 31, 1975 resulted in additional tax due in the amount of \$12,151.26.

6. Applicant made the following contentions:

a. That no allowance was given for sales made to exempt organizations. Applicant submitted five invoices billed to the Jewish Center of Atlantic Beach with an Exempt Organization Certificate attached thereto. However, daily entries to the cash receipt journal did not support the invoice amounts.

Applicant did not report any non-taxable sales on the sales tax returns filed.

b. That no allowance was given for thefts. Applicant claimed that merchandise stolen on three different occasions amounted to \$30,861.00. Police reports or other documentary evidence was not submitted to support this claim.

c. That no allowance was given for broken bottles. Applicant claimed that broken bottles represented 3% of merchandise purchased.

d. That current sales prices were used in determining the markup percentages. Applicant claimed that merchandise was sold at discount prices for a year and one-half and also that cases are sold at a 10% discount. Applicant maintained that if these facts were considered at the time of the audit, the markups would have been lower.

CONCLUSIONS OF LAW

A. That applicant's contentions regarding exempt sales, stolen merchandise, breakage, and selling prices were not substantiated by documentary or other credible evidence, which evidence is necessary to sustain his burden of proof in order to show that the tax as determined pursuant to section 1138 of the Tax Law is incorrect.

B. That the application of Allen C. Edwards is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 29, 1976 is sustained.

DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER