

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Gold Rail Inc. & Joseph Perrothers :  
Indiv. & as Officer : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 of the Tax Law :  
for the Period 9/1/71 - 8/31/74. :

State of New York  
County of Albany

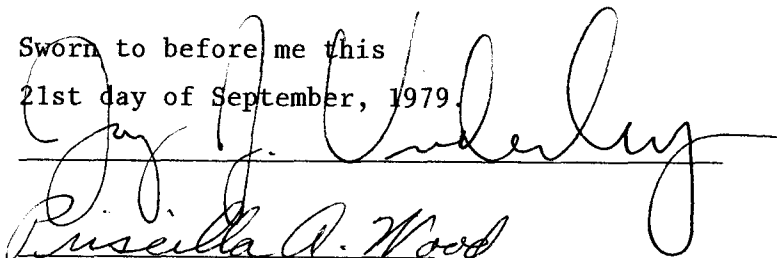
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Gold Rail Inc. & Joseph Perrothers, Indiv. & as Officer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gold Rail Inc. & Joseph Perrothers  
Indiv. & as Officer  
2850 Broadway  
New York, NY 10025

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  
21st day of September, 1979.

  
Ruseilla A. Wood

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Gold Rail Inc. & Joseph Perrothers :  
Indiv. & as Officer : AFFIDAVIT OF MAILING  
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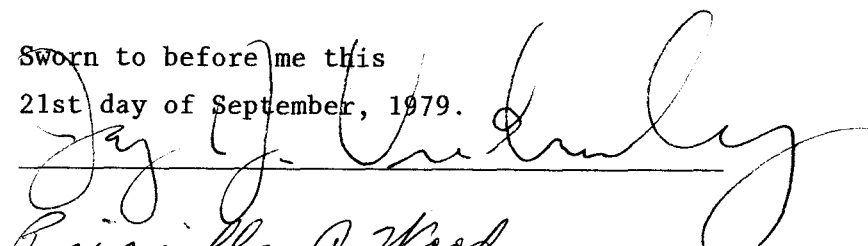

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Roy J. Macchiarola the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Roy J. Macchiarola  
11 Ingold Dr.  
Dix Hills, L.I., NY 11746

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  
21st day of September, 1979.

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 21, 1979

Gold Rail Inc. & Joseph Perrothers  
Indiv. & as Officer  
2850 Broadway  
New York, NY 10025

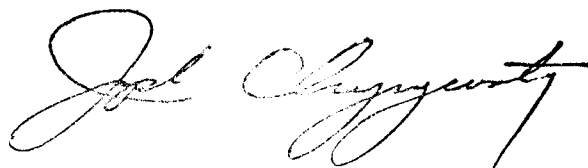
Gentlemen:

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,



cc: Petitioner's Representative  
Roy J. Macchiarola  
11 Ingold Dr.  
Dix Hills, L.I., NY 11746  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
GOLD RAIL, INC.	:	DETERMINATION
and	:	
JOSEPH PERROTHERS	:	
Individually and as an Officer,	:	
	:	
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, 1971 through	:	
August 31, 1974.	:	

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Applicants, Gold Rail, Inc., and Joseph Perrothers, individually and as an officer, 2850 Broadway, New York, New York 10025, 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, 1971 through August 31, 1974 (File No. 12998).

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 18, 1978, and was continued on August 21, 1978. Applicant appeared by Roy J. Macchiarola, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether the results of an audit performed by the Sales Tax Bureau on applicants' books and records properly reflect their additional sales tax liability for the period September 1, 1971 through August 31, 1974.

FINDINGS OF FACT

1. Applicant Gold Rail, Inc. operated a restaurant and bar near Columbia University in New York City. It filed New York state and local sales and use tax returns for the period September 1, 1971 through August 31, 1974.

2. Applicant Gold Rail, Inc. executed a consent extending the period of limitation for assessment of sales and use taxes to December 20, 1975.

3. On June 6, 1975 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 Gold Rail, Inc. and Joseph Perrothers, individually and as officer, assessing additional tax of \$23,666.85, plus penalty and interest, for the period September 1, 1971 through August 31, 1974.

4. Applicants timely filed an application for a hearing to review the aforesaid determination.

5. For the period under audit, Gold Rail, Inc. did not maintain a record of daily guest checks; therefore, the Sales Tax Bureau conducted its audit by analyzing purchases. For the audit period, Gold Rail, Inc. made purchases in the amounts of \$63,581.63, \$78,076.73 and \$154,717.61, respectively, for beer, liquor and food.

6. To arrive at Gold Rail, Inc.'s taxable sales, the Sales Tax Bureau applied markups of 293%, 323% and 100%, respectively, to the beer, liquor and food purchases. This resulted in adjusted taxable sales of \$889,575.58. Gold Rail, Inc. reported taxable sales of \$554,298.00 on its sales and use tax returns for the audit period. By subtracting the reported taxable sales from the adjusted taxable sales, the Sales Tax Bureau found unreported taxable sales of \$335,277.58.

7. At the hearing, applicants presented information and documentation which reduced the purchases subject to the markup percentages to \$54,974.63, \$69,896.73, and \$131,551.61, respectively, for the beer, liquor and food. Information was also presented which reduced the markup percentages to 220%, 247% and 84.5%, respectively, for the beer, liquor and food. These reductions lowered the adjusted taxable sales to \$661,455.00 and unreported taxable sales to \$106,157.00.

8. The reduction in purchases subject to the markup percentages are due to self-use, giveaways, and self-consumption.

The beer purchase reduction was due to employee consumption, buy-backs and beer which was included in the price of a customer's meal. This reduction resulted in \$6,267.00 in beer purchases being subject to compensating use tax.

The reduction of liquor purchases subject to the markup percentage is due to the officer's personal withdrawals, gifts, and buybacks. This reduction of \$8,180.00 is subject to compensating use tax.

The reduction of food purchases subject to the markup percentages is due to employee meals, free hors d'oeuvres and food spoilage. No compensating use tax is due on food.

#### CONCLUSIONS OF LAW

A. That applicants failed to keep adequate records as required by section 1135 of the Tax Law.

B. That the Sales Tax Bureau utilized a proper audit technique, using such information as was available, as provided for by section 1138 of the Tax Law.

C. That the application of Gold Rail, Inc. and Joseph Perrothers is granted to the extent indicated in Findings of Fact "7" and "8." The Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due in accordance with said Findings of Fact and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

SEP 21 1979

STATE TAX COMMISSION

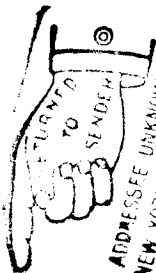
  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



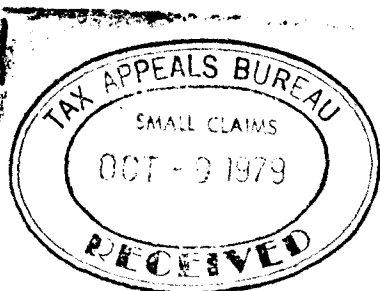
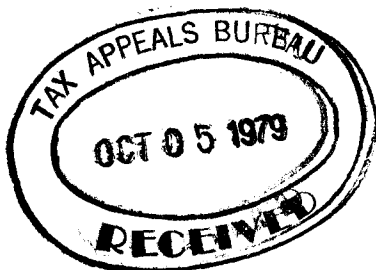
ADDRESSEE UNKNOWN  
NEW YORK, N. Y. 10025

Gold Rail Inc.

& Joseph Perrothers; Indiv. & as Officer

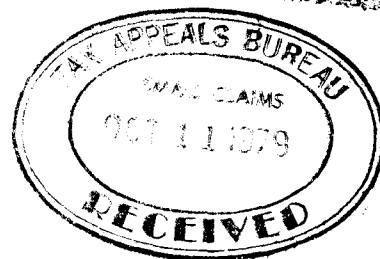
2850 Broadway

New York, NY 10025



13-0777210  
75/06/19







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

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
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Telephone: (518) 457-1723

September 21, 1979

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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,

A handwritten signature in dark ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative  
Roy J. Macchiarola  
11 Ingold Dr.  
Dix Hills, L.I., NY 11746  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
GOLD RAIL, INC.	:	DETERMINATION
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JOSEPH PERROTHERS	:	
Individually and as an Officer,	:	
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DECLARATION

I, the undersigned, do hereby declare that the foregoing is a true and correct copy of the original as the same appears in the records of the Court.

Witness my hand and seal this 1st day of June, 1901.

Notary Public for the State of New York.

Subscribed and sworn to before me this 1st day of June, 1901.

1901

Notary Public for the State of New York.

I, the undersigned, do hereby declare that the foregoing is a true and correct copy of the original as the same appears in the records of the Court.

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A. That applicants failed to keep adequate records as required by section 1135 of the Tax Law.

B. That the Sales Tax Bureau utilized a proper audit technique, using such information as was available, as provided for by section 1138 of the Tax Law.

1. The first part of the document is a letter from the President of the United States to the Congress.

2. The second part is a report from the Secretary of the Treasury on the state of the Union.

3. The third part is a report from the Secretary of the Navy on the state of the Navy.

4. The fourth part is a report from the Secretary of the War on the state of the War.

5. The fifth part is a report from the Secretary of the Interior on the state of the Interior.

6. The sixth part is a report from the Secretary of the Agriculture on the state of the Agriculture.

7. The seventh part is a report from the Secretary of the Commerce on the state of the Commerce.

8. The eighth part is a report from the Secretary of the Education on the state of the Education.

9. The ninth part is a report from the Secretary of the Health on the state of the Health.

10. The tenth part is a report from the Secretary of the Labor on the state of the Labor.

11. The eleventh part is a report from the Secretary of the Finance on the state of the Finance.

12. The twelfth part is a report from the Secretary of the Public Works on the state of the Public Works.

13. The thirteenth part is a report from the Secretary of the Public Health on the state of the Public Health.

14. The fourteenth part is a report from the Secretary of the Public Education on the state of the Public Education.

15. The fifteenth part is a report from the Secretary of the Public Labor on the state of the Public Labor.

16. The sixteenth part is a report from the Secretary of the Public Finance on the state of the Public Finance.

17. The seventeenth part is a report from the Secretary of the Public Works on the state of the Public Works.

18. The eighteenth part is a report from the Secretary of the Public Health on the state of the Public Health.

19. The nineteenth part is a report from the Secretary of the Public Education on the state of the Public Education.

20. The twentieth part is a report from the Secretary of the Public Labor on the state of the Public Labor.

21. The twenty-first part is a report from the Secretary of the Public Finance on the state of the Public Finance.

22. The twenty-second part is a report from the Secretary of the Public Works on the state of the Public Works.

23. The twenty-third part is a report from the Secretary of the Public Health on the state of the Public Health.

24. The twenty-fourth part is a report from the Secretary of the Public Education on the state of the Public Education.

25. The twenty-fifth part is a report from the Secretary of the Public Labor on the state of the Public Labor.



C. That the application of Gold Rail, Inc. and Joseph Perrothers is granted to the extent indicated in Findings of Fact "7" and "8." The Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due in accordance with said Findings of Fact and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

SEP 21 1979

STATE TAX COMMISSION

James H. Tuel  
PRESIDENT

Milton Kremer  
COMMISSIONER

Thomas H. Lye  
COMMISSIONER

TO THE HONORABLE SENATE OF THE UNITED STATES

IN SENATE, FEBRUARY 1, 1907.

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

AT ITS SESSION, DECEMBER 17, 1906.

WASHINGTON:

GOVERNMENT PRINTING OFFICE:

SEP 21 1907

REPORT OF THE  
COMMISSIONER OF THE  
GENERAL LAND OFFICE  
IN RESPONSE TO A  
RESOLUTION PASSED BY  
THE SENATE  
AT ITS SESSION,  
DECEMBER 17, 1906.