

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
McLoone Liquors, 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 of the Tax Law
for the Period 9/1/72-8/31/75. :

State of New York
County of Albany

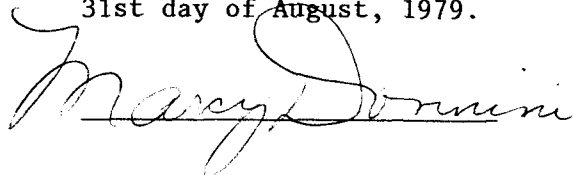
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Determination by mail upon McLoone Liquors, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

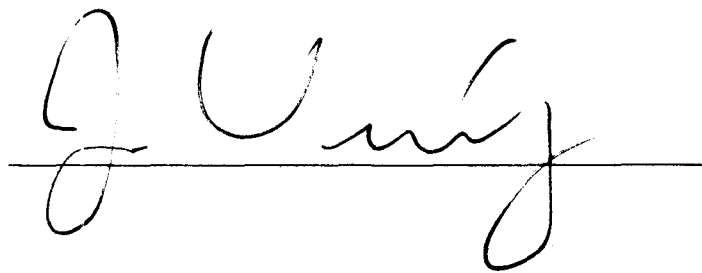
McLoone Liquors, Inc.
2921 Beverly Rd.
Brooklyn, NY

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
31st day of August, 1979.


Mary Dominici


Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

McLoone Liquors, Inc.
2921 Beverly Rd.
Brooklyn, NY

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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MC LOONE LIQUORS, 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 September 1, 1972 through	:	
August 31, 1975.	:	
	:	

Applicant, McLoone Liquors, Inc., 2921 Beverly Road, Brooklyn, New York 11226, 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. 10713).

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 June 19, 1978 at 10:45 A.M. Applicant appeared by its secretary-treasurer, Robert Murray. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Robert N. Felix, Esq., of counsel).

ISSUE

Whether the audit conducted by the Sales Tax Bureau was proper and correct.

FINDINGS OF FACT

1. Applicant, McLoone Liquors, Inc., filed New York state and local sales and use tax returns for the period September 1, 1972 through August 31, 1975.

2. On December 17, 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 applicant for \$3,647.21, plus penalty and interest of \$1,170.34, for a total of \$4,817.55, for the period September 1, 1972 through August 31, 1975.

3. Applicant operated a retail liquor store in Brooklyn, New York.

4. Using the months of August, 1974 and February, 1975 as test periods, the Sales Tax Bureau on audit categorized wine and liquor purchases. It was determined that wine represented 32.4% of the purchases and liquor 67.6%. Markup percentages of 53% and 32.3% were computed for wine and liquor, respectively, by comparing October, 1975 purchases of selected items to the shelf price for the same month. Total purchases for the audit period of \$348,603.00 were obtained from the general ledger. This amount was separated into wine purchases (\$112,947.00) and liquor purchases (\$235,656.00) by applying the percentages determined from the test periods. The markup percentages were applied to these purchases to arrive at audited taxable sales of \$484,582.00. Reported taxable sales of \$436,173.00 were deducted from this amount, leaving additional sales of \$48,409.00 and tax due of \$3,598.21.

The Sales Tax Bureau also assessed a use tax of \$49.00 on the purchase of a refrigerator.

5. Applicant contended that no allowance was given for bottle breakage or pilferage. Counsel for the Sales Tax Bureau and applicant stipulated for the record that breakage and pilferage represent 1-1/2% of total merchandise purchased and that the Notice should be adjusted accordingly.

6. Applicant also contended the following:

- a) He and members of his family take home an average of
four (4) bottles of liquor per week at a cost of \$7.80

per bottle. (However, applicant did not claim any personal use of merchandise on Federal income tax returns.)

- b) The markup percentages computed by the Sales Tax Bureau were excessive and that in order to be competitive, his markups were 16% to 18% on quarts of liquor and 28% to 30% on pints.
- c) He sells cases at discount prices and also sells to friends and business associates at reduced prices.

Applicant failed to submit any documentary evidence to support these contentions.

7. Applicant performed additional tests for the percentages of wine and liquor purchased, using the same procedure as the Sales Tax Bureau. The test months and results are as follows:

<u>MONTH</u>	<u>WINE</u>	<u>LIQUOR</u>
July 1974	16%	84%
September 1974	19%	81%
January 1975	22%	78%
March 1975	23%	77%

8. Applicant paid sales tax on the refrigerator at the time of purchase.

CONCLUSIONS OF LAW

A. That the audit conducted by the Sales Tax Bureau did not give consideration to bottle breakage and pilferage; therefore, total purchases are reduced by 1-1/2%, in accordance with Finding of Fact "5".

B. That the Sales Tax Bureau's three-month test of purchases to determine the percentage of wine and liquor purchases did not adequately reflect applicant's business activities; that the test periods performed by applicant and by the Sales Tax Bureau will be combined to determine the percentages of wine and liquor purchases;

and that the resultant percentages of 23% for wine and 77% for liquor will be used to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 17, 1975.

C. That the use tax of \$49.00 on the purchase of the refrigerator is cancelled.

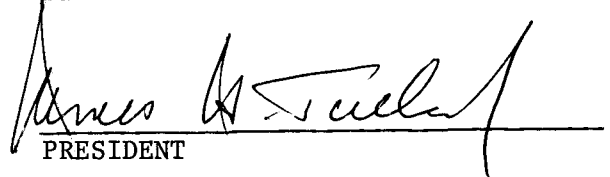
D. That in all other respects, the audit of applicant's books and records by the Sales Tax Bureau followed generally accepted audit procedures, consistent with the nature of the business operation.

E. That the application of McLoone Liquors, Inc. is granted to the extent indicated in Conclusions of Law "A", "B" and "C"; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 17, 1975; and that, except as so granted, the application is in all other respects denied.

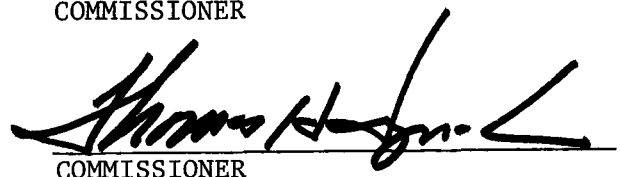
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER