

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Murray's Wines & Liquors :
and Murray & Sylvia Rachlin : 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 3/1/73 - 2/29/76. :

State of New York
County of Albany

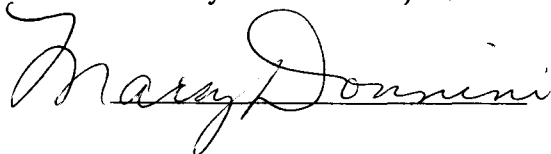
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Morris H. Levine the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

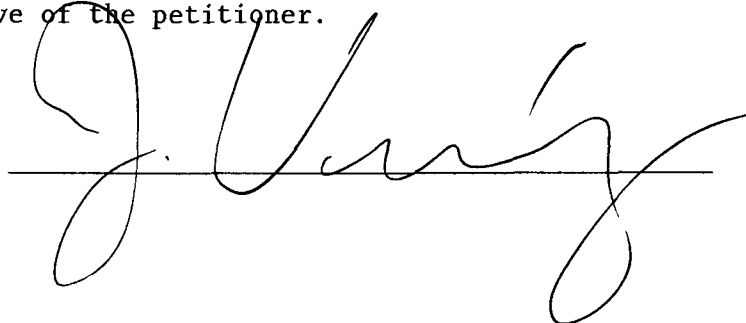
Mr. Morris H. Levine
181 S. Franklin Ave.
Valley Stream, NY 11582

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
9th day of October, 1979.


Mary Donnini


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
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Murray's Wines & Liquors :
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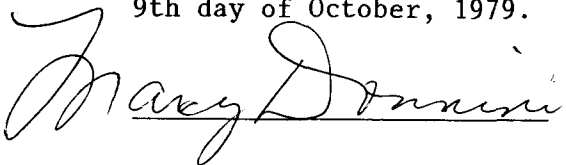
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Murray's Wines & Liquors, and Murray & Sylvia Rachlin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

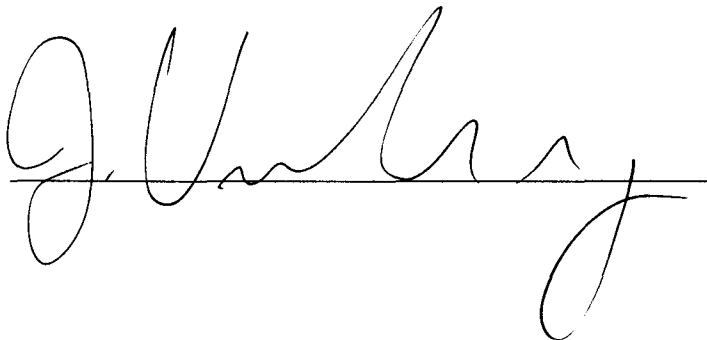
Murray's Wines & Liquors
and Murray & Sylvia Rachlin
77-03 13th Ave.
Brooklyn, NY 11228

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
9th day of October, 1979.


Mary Donnan



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

October 9, 1979

Murray's Wines & Liquors
and Murray & Sylvia Rachlin
77-03 13th Ave.
Brooklyn, NY 11228

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

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Morris H. Levine
181 S. Franklin Ave.
Valley Stream, NY 11582
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MURRAY'S WINES AND LIQUORS	:	DETERMINATION
and	:	
MURRAY RACHLIN and SYLVIA RACHLIN,	:	
Individually and as Co-Partners	:	
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, 1973 through	:	
February 29, 1976.	:	

Applicants, Murray's Wines and Liquors and Murray Rachlin and Sylvia Rachlin, individually and as co-partners, 7703 13th Avenue, Brooklyn, New York 11228, 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, 1973 through February 29, 1976 (File No. 18817).

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 December 18, 1978 at 1:15 P.M. Applicant appeared by Morris H. Levine, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the results of the Sales Tax Bureau's audit of the books and records of Murray's Wines and Liquors for the period March 1, 1973 through February 29, 1976 properly reflected applicant's additional sales tax liability.

FINDINGS OF FACT

1. Applicant Murray's Wines and Liquors ("Murray's") operated a retail wine and liquor store in Brooklyn, New York. During the period at issue, Murray Rachlin and Sylvia Rachlin were co-partners of Murray's.

2. Murray's filed and paid New York state and local sales and use tax returns for the period March 1, 1973 through February 29, 1976.

3. On April 21, 1977 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 Murray's and Murray Rachlin and Sylvia Rachlin, individually and as co-partners, assessing additional tax due of \$9,206.19, plus penalty and interest of \$4,562.60, for a total due of \$13,768.79.

4. February of 1976 was selected as the test period for the examination of Murray's wine and liquor purchases. The audit disclosed that Murray's purchase ratio was 50.17% for wines and 49.83% for liquors. The sales markup tests on wines and liquors determined an average markup of 52.04% for wines and 20.54% for liquors.

At a post-audit conference with representatives of the Sales Tax Bureau, Murray's presented its analysis of wine and liquor purchases made during the month of December 1974. The Sales Tax Bureau combined the two analyses and arrived at an adjusted purchase ratio of 34.52% for wines and 65.48% for liquors. Additionally, a correction was made for errors that were found in the original markup test, which resulted in an adjusted markup of 46.86% for wines and 18.13% for liquors.

The application of the adjusted allocation percentages and of the adjusted markup percentages to purchases (per Murray's records) for the audit period, minus the taxable sales reported for the audit period, resulted in additional taxable sales of \$110,355.00, and an under-reporting factor of 12.08%.

5. A review of the furniture and fixture purchases determined that acquisitions made in August of 1975 totaled \$12,511.50. Murray's could only substantiate that sales tax was paid on \$1,800.00 of this amount. The remaining \$10,711.50 was included in the assessment.

6. Murray's contended that:

- (a) The markup tests were inequitable in that no consideration was given to advertised specials.
- (b) No allowance was made for sales to exempt organizations.
- (c) No allowance was given for breakage or spoilage.
- (d) No allowance was given for robbery or pilferage.
- (e) No allowance was made for sales at discount.

7. Murray's also contended that no consideration was given to an increase in inventory which was necessitated by a move to another business location with a larger sales area. Murray's records supported the contention that the inventory increased by \$17,554.00 over the audit period.

8. Murray's further contended that the test months of December 1975 and February 1976 did not fairly represent its normal sales activities. It argued that another month's purchase records should be included in the test. Murray's introduced documentary evidence for the month of June 1973 which disclosed purchases of wine and liquor in the amounts of \$5,744.00 and \$13,340.00, respectively.

These purchases, plus the purchases of the test months, produced a purchase ratio of 33.4% for wine and 66.6% for liquor.

9. Applicants acted in good faith throughout the audit, and no attempt was made to evade the tax.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau's audit did not consider the increase in Murray's inventory as set forth in Finding of Fact "7"; therefore, the total purchases of \$799,377.00 are hereby reduced by \$17,554.00.

B. That the test months of December 1975 and February 1976 did not fairly represent Murray's normal sales activities; therefore, the purchase allocation percentages are hereby reduced to 33.4% for wine and 66.6% for liquor, as described in Finding of Fact "8".

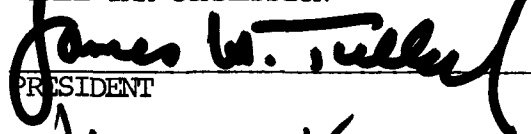
C. That interest in excess of the minimum interest and penalty imposed pursuant to section 1145(a) of the Tax Law are waived.

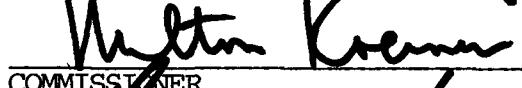
D. That the application of Murray's Wines and Liquors and Murray Rachlin and Sylvia Rachlin, individually and as co-partners, is granted to the extent indicated in Conclusions of Law "A", "B" and "C"; that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 21, 1977; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER