

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louis & Mary Oldoni :
d/b/a GAL Restaurant, 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 12/1/69-5/14/73. :

State of New York
County of Albany

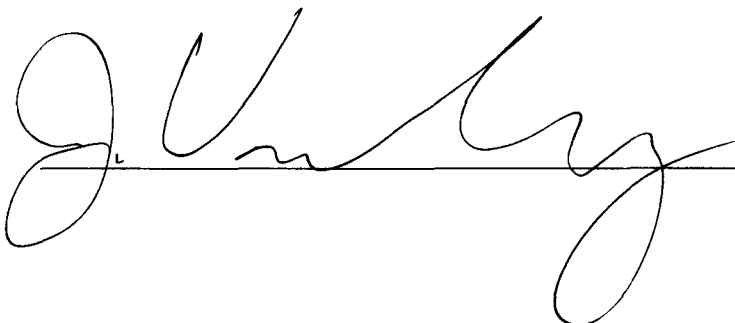
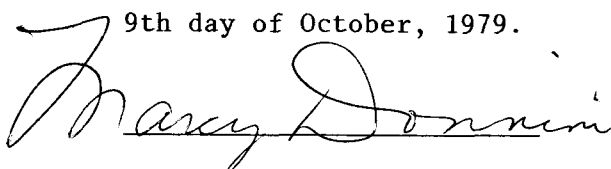
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Louis & Mary Oldoni, d/b/a GAL Restaurant, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis & Mary Oldoni
d/b/a GAL Restaurant, Inc.
122 Seneca St.
E. Northport, NY 11731

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.



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

October 9, 1979

Louis & Mary Oldoni
d/b/a GAL Restaurant, Inc.
122 Seneca St.
E. Northport, NY 11731

Dear Mr. & Mrs. Oldoni:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MARY OLDONI and LOUIS OLDONI,	:	DETERMINATION
Individually and as Officers of	:	
GAL RESTAURANT, INC.	:	
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 December 1, 1969 through	:	
May 14, 1973.	:	

Applicants, Mary Oldoni and Louis Oldoni, individually and as officers of GAL Restaurant, Inc., 122 Seneca Street, East Northport, New York 11731, 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 December 1, 1969 through May 14, 1973 (File No. 11794).

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 August 25, 1978. Applicants appeared by Mary Oldoni. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether applicants are personally liable for the sales tax due from GAL Restaurant, Inc.

FINDINGS OF FACT

1. Applicant Mary Oldoni was president, while applicant Louis Oldoni was manager, host and bartender of GAL Restaurant, Inc. ("GAL") d/b/a Captain Kidd's Pub, a bar and restaurant at 145 East 23rd Street, New York, New York.

2. GAL timely filed sales tax returns for quarters ended February 28, 1970 through February 28, 1971 and paid the taxes due thereon. GAL filed sales tax returns, without payment, for the quarters ended May 31, 1971 through May 31, 1972 for which the Sales Tax Bureau issued notices and demand for payment of sales and use taxes due against GAL. GAL did not file sales tax returns for any quarters after May 31, 1972.

3. On March 16, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (#90,304,585) against GAL for taxes due of \$11,275.67, plus penalty and interest, for the period December 1, 1969 through November 30, 1972. On July 18, 1973, the Sales Tax Bureau issued a Notice of Assessment Review which modified the Notice issued on March 16, 1973 by reducing taxes due to \$3,868.27, plus penalty and interest. The revision was made to reflect the results of a field audit performed on the books and records of GAL by the Sales Tax Bureau.

4. On July 23, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (#90,750,741) against GAL for taxes due of \$2,800.00, plus penalty and interest, for the period December 1, 1972 through May 14, 1973. This assessment was based on an average of gross sales reported on previous sales tax returns.

5. On September 10, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant Mary Oldoni for taxes due of \$11,255.67, plus penalty and interest, for the period December 1, 1969 through November 30, 1972. The Notice was issued under sections 1131(1) and 1133(a) of the Tax Law on the grounds that she was personally liable as an officer of GAL. Applicant Mary Oldoni's responsibilities included signing checks on behalf of the corporation for payment of expenses and purchases, signing sales tax returns and signing the renewal application for the liquor license.

6. On August 22, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant Mary Oldoni for taxes due of \$2,800.00, plus penalty and interest, for the period December 1, 1972 through May 14, 1973.

7. On November 19, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant Louis Oldoni for taxes due of \$3,868.27, plus penalty and interest, for the period December 1, 1969 through August 31, 1971 and June 1, 1972 through November 30, 1972, based on his personal liability as an officer of GAL.

8. The liquor license of GAL was surrendered to the State Liquor Authority on January 5, 1973. After that date, the business continued as a juice bar.

9. The landlord of the premises had GAL evicted on May 14, 1973 for non-payment of rent.

10. An accountant was engaged by the corporation to prepare the various tax returns (including sales tax returns) for the corporation.

CONCLUSIONS OF LAW

A. That applicant Louis Oldoni was not an officer of GAL Restaurant, Inc., nor an individual responsible for the reporting and payment of the sales taxes of said corporation during the periods at issue; therefore, the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on November 19, 1975 against Louis Oldoni is cancelled.

B. That applicant Mary Oldoni was personally liable for failure to collect tax or pay over the tax for the period December 1, 1969 through May 14, 1973, within the meaning and intent of sections 1133(1) and 1133(a) of the Tax Law.

C. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on September 10, 1973 against applicant Mary Oldoni, covering the period December 1, 1969 through November 30, 1972, is reduced from \$11,255.67 to \$3,868.27.

D. That the application of Mary Oldoni is granted to the extent indicated in Conclusion of Law "C", and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

James B. Tuller
PRESIDENT

Walter Krum
COMMISSIONER

Thomas H. [Signature]
COMMISSIONER