

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Howard & Charles Schneider :
d/b/a Schneider & Schneider : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 6/1/72 - 5/31/75. :

State of New York
County of Albany

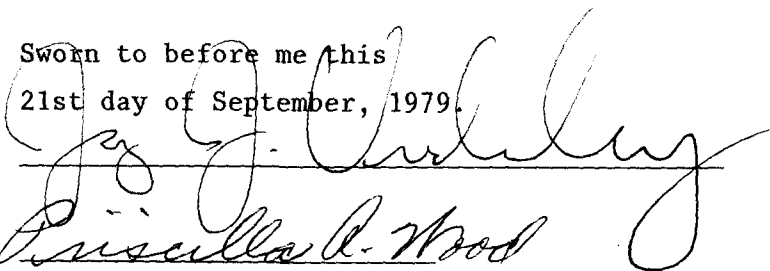

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Howard & Charles Schneider, d/b/a Schneider & Schneider, the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

Howard & Charles Schneider
d/b/a Schneider & Schneider
1501 White Plains Rd.
Bronx, NY 10462

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.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Howard & Charles Schneider :
d/b/a Schneider & Schneider : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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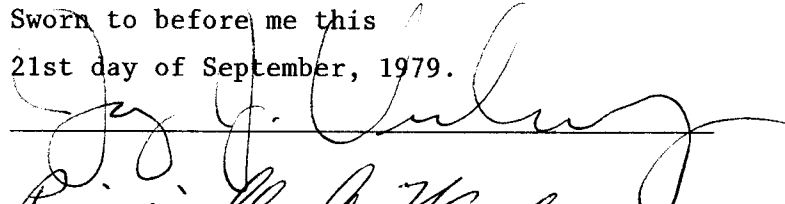
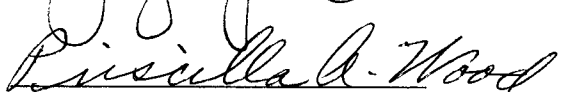
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of September, 1979, he served the within notice of Determination by mail upon Paul Miller the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Paul Miller
26 Court St.
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 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

Howard & Charles Schneider
d/b/a Schneider & Schneider
1501 White Plains Rd.
Bronx, NY 10462

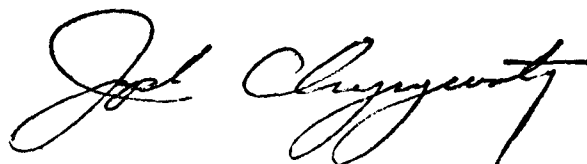
Gentlemen:

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

cc: Petitioner's Representative
Paul Miller
26 Court St.
Brooklyn, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
HOWARD SCHNEIDER & CHARLES SCHNEIDER :
d/b/a SCHNEIDER & SCHNEIDER : 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 June 1, 1972 through May 31, :
1975. :

Applicants, Howard Schneider and Charles Schneider d/b/a
Schneider & Schneider, 1501 White Plains Road, Bronx, New York
10462, 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 June 1, 1972 through May 31, 1975 (File No. 14527).

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 March 8, 1978 at 2:45 P.M. Applicants
appeared by Paul Miller, accountant. The Sales Tax Bureau appeared
by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether applicants' sales tax liability was finally and irrevocably
fixed by their execution of a Consent to Fixing of Tax Not Previously

Determined and Assessed (ST-580) and by payment to the State of New York of \$7,992.47 (in accordance with such consent), so as to preclude the Sales Tax Bureau from redetermining said liability.

FINDINGS OF FACT

1. A field audit of applicants' candy store business was conducted by observation, since applicant refused to provide the Sales Tax Bureau with business records. Based on said audit, an estimate was made of applicants' gross sales and the tax due thereon.

2. Based on said estimate, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due on July 31, 1975 for the period June 1, 1972 through May 31, 1975, assessing applicants \$7,749.24 in taxes due, plus \$2,201.98 in penalty and interest, for a total due of \$9,951.22.

3. On October 28, 1975, applicants executed a Consent to Fixing of Tax Not Previously Determined and Assessed (Form ST-580), consenting to the assessment of a tax due of \$7,065.44, plus penalty and/or interest of \$927.03, for a total due of \$7,992.47.

4. The Consent to Fixing of Tax Not Previously Determined and Assessed provides, in part, that:

"The undersigned agrees that there is due and payable to the State Tax Commission a sales and/or use tax as described below, and also agrees that by this consent that such tax is hereby assessed and finally and irrevocably fixed in accordance with the provisions of the Tax Law, subject to the approval of the State Tax Commission."

5. The Sales Tax Bureau received the executed Form ST-580, along with applicants' payment of \$7,992.47 in accordance therewith. At that point, the Sales Tax Bureau did not close the case, but rather held it open pending the results of an audit conducted by the Income Tax Bureau.

6. On November 28, 1975, the Sales Tax Bureau informed applicants' accountant that the case was not approved, based on a review of applicants' New York State partnership returns for the years 1972 and 1973. The review indicated that the initial audit estimates of applicants' gross sales were lower than the gross sales reported on the partnership returns.

7. Based on said review, the Sales Tax Bureau issued a second Notice of Determination and Demand for Payment of Sales and Use Taxes Due on April 7, 1976, reassessing applicants for \$8,488.50 in tax due, plus \$2,651.84 in penalty and interest, for a total due of \$11,140.34. This amount (less the \$7,992.47 previously paid by applicants) resulted in a balance due of \$3,147.87.

8. Applicant contended that its execution of the consent (Form ST-580) and its payment of \$7,992.47 in accordance therewith, finally and irrevocably fixed its tax liability so as to preclude the Sales Tax Bureau from redetermining said liability and issuing a second Notice of Determination and Demand for Payment of Sales and Use Taxes Due. Additionally, applicants contend that the Sales Tax Bureau represented that the sum of \$7,992.47 remitted by applicants was accepted as payment in full of their liability.

CONCLUSIONS OF LAW

A. That applicants' execution of consent Form ST-580 and its payment of \$7,992.47 in accordance therewith, finally and irrevocably fixed its tax liability, subject to the approval of the State Tax Commission as specified on said form.

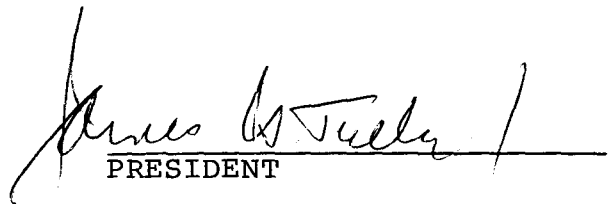
B. That applicants' consent Form ST-580, not having been approved by the State Tax Commission, did not finally and irrevocably fix applicants' tax liability within the meaning and intent of section 1138(c) of the Tax Law, so as to preclude the Sales Tax Bureau from reassessing said liability, based on receipt of new information from applicants' income tax reports.

C. That the application of Howard Schneider and Charles Schneider d/b/a Schneider & Schneider is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 7, 1976 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 21 1979


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO.....Mr. Coburn.....

No better address. Please file

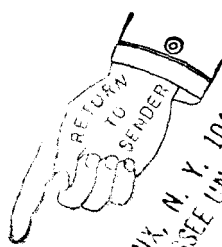
10/10/79

Joseph Chyrywaty

M-75 (5/76)

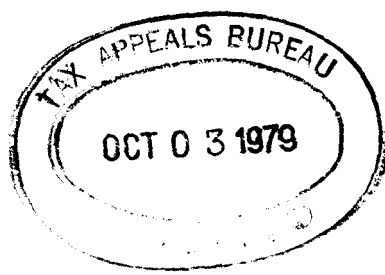
TA-26 (4-76) 25M

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



RETURN
TO
SENDER
BRONX, N. Y. 10462
ADDRESSEE UNKNOWN

Howard & Charles Schneider
d/b/a Schneider & Schneider
1501 White Plains Rd.
Bronx, NY 10462









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

September 21, 1979

Howard & Charles Schneider
d/b/a Schneider & Schneider
1501 White Plains Rd.
Bronx, NY 10462

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Sincerely,

A handwritten signature in dark ink, appearing to read "John J. Sollecito". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

cc: Petitioner's Representative
Paul Miller
26 Court St.
Brooklyn, NY
Taxing Bureau's Representative

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of :
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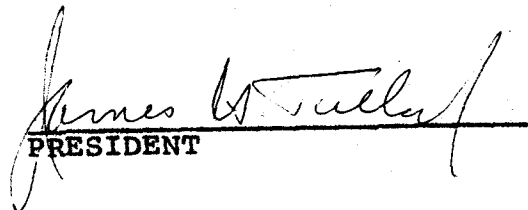
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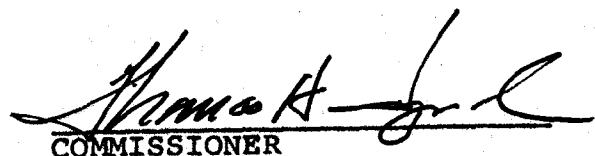
DATED: Albany, New York

SEP 21 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER