

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Uwe Jens Johannsen :
a/k/a Eric Johannsen : 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 12/1/73-5/31/74. :

State of New York
County of Albany

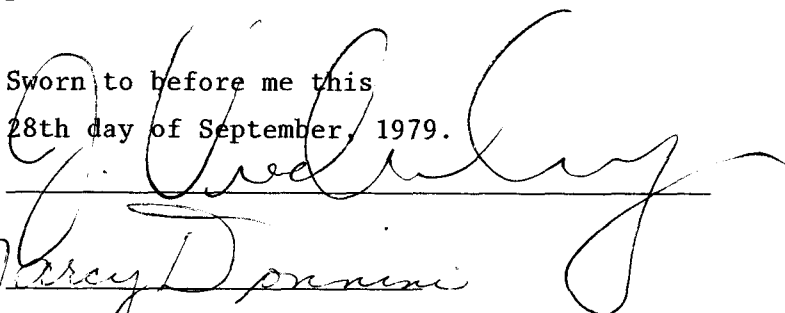
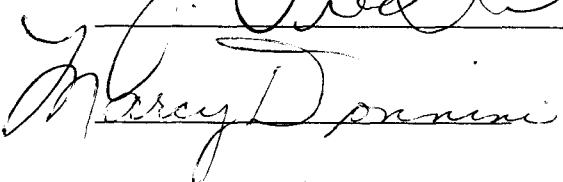
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Uwe Jens Johannsen, a/k/a Eric Johannsen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Uwe Jens Johannsen
a/k/a Eric Johannsen
868 Ellicott Creek Rd.
Tonawanda, NY 14150

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
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Uwe Jens Johannsen :
a/k/a Eric Johannsen : AFFIDAVIT OF MAILING
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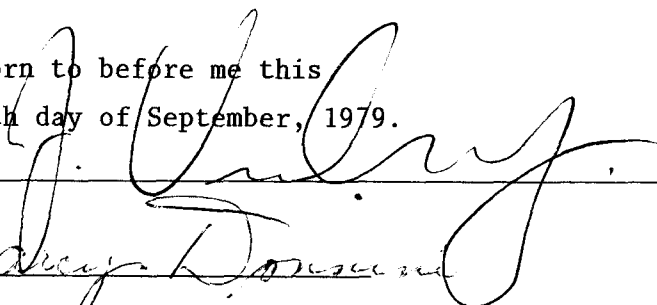
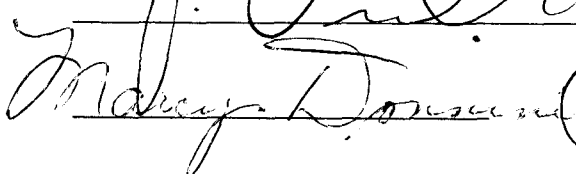
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Daniel J. Ward the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Daniel J. Ward
Robert G. DiVita
5678 Main St.
Williamsville, NY 14221

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
28th day of September, 1979.



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 28, 1979

Uwe Jens Johannsen
a/k/a Eric Johannsen
868 Ellicott Creek Rd.
Tonawanda, NY 14150

Dear Mr. Johannsen:

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 "Robert G. DiVita".

cc: Petitioner's Representative
Daniel J. Ward
Robert G. DiVita
5678 Main St.
Williamsville, NY 14221
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
CHARLES M. MANGIONE	:	
and	:	DETERMINATION
UWE JENS JOHANNSEN,	:	
A/K/A ERIC JOHANNSEN	:	
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, 1973 through	:	
May 31, 1974.	:	

Applicants, Charles M. Mangione, 25 Albert Court, Depew, New York 14043, and Eric Johannsen, 868 Ellicott Crook Road, Tonawanda, New York 14150, filed applications 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, 1973 through May 31, 1974 (File No. 16262).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on March 8, 1977 at 2:45 P.M. Applicants appeared by Robert G. Divita, Esq. (Daniel J. Ward, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Arnold M. Glass, Esq., of counsel).

ISSUE

Whether applicants were liable for unpaid New York State sales taxes due from Halfway House Restaurant, Inc. for the period December 1, 1973 through May 31, 1974.

FINDINGS OF FACTS

1. Halfway House Restaurant, Inc. failed to pay over to the Sales Tax Bureau, sales tax of \$14,011.60 which was due for the period December 1, 1973 through May 31, 1974.

2. On April 3, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Charles M. Mangione and Eric Johannsen, as officers of Halfway House Restaurant, Inc. for the periods December 1, 1973 through May 31, 1974. Said Notice was issued for \$14,011.60, plus penalty and interest of \$3,783.13.

3. Halfway House Restaurant, Inc. operated a restaurant and bar at 5447 Main Street, Williamsville, New York. The sole stockholder was James Williams. Applicants negotiated for and contracted to purchase the shares of stock in the corporation, but said agreement was contingent upon applicants acquiring a liquor license.

4. During June of 1973 (when negotiations to purchase the stock began) and November of 1973 (when the liquor license application was rejected), applicant Charles M. Mangione visited the place of business three or four evenings per week to meet customers and to learn the business operations. At no time was applicant employed by the corporation, or authorized to hire or discharge employees, sign checks, or file tax returns.

5. During the period July 1973 to March 1974, applicant Eric Johannsen was employed by the corporation in a managerial position, to help familiarize himself with the operation of the bar. He had limited authority to sign checks for food and supplies if Mr. Williams was absent; however, applicant had no authority in

the financial operation of the business.

6. Applicant Eric Johannsen signed one check for withholding tax which was dated November 3, 1973. He was issued a Notice of Deficiency for unpaid withholding taxes due from Halfway House Restaurant, Inc. In a decision issued January 25, 1977 the State Tax Commission found that Eric Johannsen was not a person under a duty to perform the task of collecting and paying over the withholding taxes. The Notice of Deficiency was subsequently cancelled.

7. Applicant Eric Johannsen continued to work at the restaurant after the application for the liquor license was rejected, solely because the owner of the building in which the business was located gave reasonable assurances that Mr. Johannsen could buy the business in a few months. In March of 1974, it became apparent that this was impossible, and applicant quit. During the period November 1973 through March 1974, Mr. Johannsen took in no cash, did not control waiter checks, and did not supervise the bookkeeper; however, he did sign one sales and use tax return (ST-100) as manager. Mr. Johannsen was under the complete control of Mr. Williams.

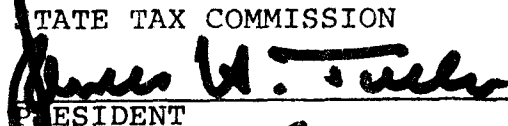


CONCLUSIONS OF LAW

A. That applicants, Charles M. Mangione and Eric Johannsen, were not "persons required to collect tax" within the meaning and intent of section 1131 of the Tax Law; therefore, they are not liable for the tax under section 1133 of the Tax Law.

B. That the applications of Charles M. Mangione and Eric Johannsen are hereby granted and the Notice of Determination and Demand for Payment of Sales and Use Tax Due issued April 3, 1975 is cancelled.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER