

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Allred, Samuel Balint, E. :
d/b/a B & A Luncheonette : 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 Years 12/1/71-11/30/75. :

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 11th day of January, 1980, he served the within notice of Determination by mail upon Allred, Samuel Balint, E., d/b/a B & A Luncheonette, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allred, Samuel Balint, E.
d/b/a B & A Luncheonette
47 Java St.
Brooklyn, NY 11222

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Allred, Samuel Balint, E. :
d/b/a B & A Luncheonette : AFFIDAVIT OF MAILING
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Years 12/1/71-11/30/75. :

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 11th day of January, 1980, he served the within notice of Determination by mail upon Anthony Grosso 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. Anthony Grosso
2900 Hempstead Tpke.
Levittown, NY 11756

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

Allred, Samuel Balint, E.
d/b/a B & A Luncheonette
47 Java St.
Brooklyn, NY 11222

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Anthony Grosso
2900 Hempstead Tpke.
Levittown, NY 11756
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
EMIL BALINT and SAMUEL ALLRED, Co-Partners	:	DETERMINATION
d/b/a B & A LUNCHEONETTE	:	
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, 1971	:	
through November 30, 1975.	:	

Applicants, Emil Balint and Samuel Allred, Co-partners, d/b/a B & A Luncheonette, 47 Java Street, Brooklyn, New York 11222, 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, 1971 through November 30, 1975 (File No. 14532).

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 March 19, 1979 at 9:15 A.M. Applicants appeared by Anthony Grosso, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether applicants are liable for sales tax on additional taxable sales determined by the Sales Tax Bureau for the period December 1, 1971 through November 30, 1975.

FINDINGS OF FACT

1. On March 3, 1976, 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 the applicants for the period December 1, 1971 through November 30,

1975. The notice was issued for \$10,850.36, plus penalty and interest of \$3,989.06, for a total of \$14,839.42.

2. During the period at issue, applicants operated a luncheonette at 276 Franklin Street, Brooklyn, New York. All items sold by applicants were subject to the sales tax.

3. In an attempt to audit applicants' books and records, the Sales Tax Bureau discovered that the only records available were guest checks for the period September 1, 1974 through November 30, 1974. The guest checks totaled \$9,624.64. The Sales Tax Bureau increased said receipts by 30 percent based on applicants' statement that sales had decreased to that extent. Since no other records were available, the Sales Tax Bureau assumed that quarterly receipts were constant throughout the audit period and determined total taxable sales of \$150,144.72. Applicants reported taxable sales of \$25,666.57, leaving additional taxable sales of \$124,478.15 and tax due thereon of \$8,885.11.

The original audit period was December 1, 1971 through November 30, 1974. The audit was subsequently updated to include the period December 1, 1974 through November 30, 1975. The previous findings were used as a basis of computing the tax liability.

4. Applicants failed to submit any documentary evidence in the form of books and records or otherwise to show that the Sales Tax Bureau's determination of additional sales taxes due was incorrect.

CONCLUSIONS OF LAW

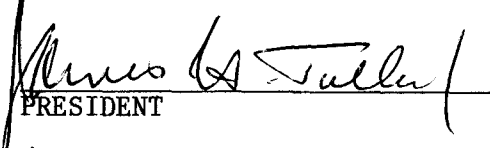
A. That where necessary, the Sales Tax Bureau may estimate sales tax due on the basis of available records in accordance with the meaning and intent of section 1138(a) of the Tax Law; that the applicants failed to introduce documentary or other substantial evidence to show that the Sales Tax Bureau's determination of additional tax due was incorrect; therefore, applicants are liable for said taxes.

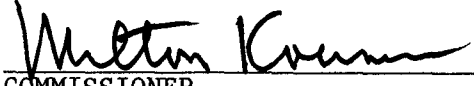
B. That the application of Emil Balint and Samuel Allred, Co-Partners, d/b/a B & A Luncheonette is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 3, 1976 is sustained.


DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER