

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Cool Spot Lounge, 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 & 29 of the Tax Law  
for the Period 12/1/74 - 11/30/77. :

State of New York  
County of Albany

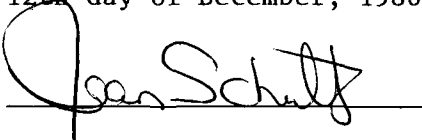
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by mail upon Cool Spot Lounge, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

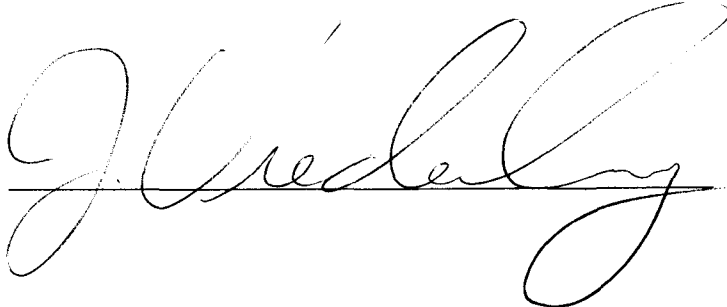
Cool Spot Lounge, Inc.  
c/o Eleanor A. Parris  
244 Belmont Pkwy.  
Hempstead, NY 11550

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  
12th day of December, 1980.

  
\_\_\_\_\_

  
\_\_\_\_\_

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

December 12, 1980

Cool Spot Lounge, Inc.  
c/o Eleanor A. Parris  
244 Belmont Pkwy.  
Hempstead, NY 11550

Dear Ms. Parris:

Please take notice of the Decision 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
COOL SPOT LOUNGE, INC.	:	DECISION
	:	
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, 1974 through	:	
November 30, 1977.	:	

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Petitioner, Cool Spot Lounge, Inc., c/o Eleanor Parris, 244 Belmont Parkway, Hempstead, New York 11550, filed a petition 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, 1974 through November 30, 1977 (File No. 25041).

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 September 30, 1980 at 9:15 A.M. Petitioner appeared by Eleanor A. Parris, President. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division in the absence of books and records, properly determined petitioner's sales tax liability for the period December 1, 1974 through November 30, 1977.

FINDINGS OF FACT

1. Petitioner, Cool Spot Lounge, Inc., operated a bar located at 503 DeKalb Avenue, Brooklyn, New York.

2. On September 11, 1978, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes

Due against petitioner for the period December 1, 1974 through November 30, 1977 for taxes due of \$8,583.20, plus penalty and interest of \$3,888.35, for a total of \$12,471.55.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period December 1, 1974 through August 31, 1977 to September 19, 1978.

4. Petitioner did not maintain books and records during the period at issue so that the Audit Division was unable to conduct an audit. Petitioner sent letters to various beer and liquor suppliers requesting the dollar amount of purchases made for the period under audit. However, petitioner received no response to its inquiries. Therefore, the Audit Division estimated petitioner's sales to be \$180,000.00 which was based on the amount of sales determined on a previous audit of petitioner's books and records for the period December 1, 1971 through November 30, 1974. Petitioner reported sales of \$72,710.00 for the period at issue, leaving additional taxable sales of \$107,290.00 and tax due thereon of \$8,583.20. The prior audit disclosed a deficiency of \$4,231.98 which was consented to and paid by petitioner.

5. Petitioner argued that after the audit for the period December 1, 1971 through November 30, 1974, the business was only open sporadically because the electricity was turned off by the power company. Petitioner argued further that it purchased a limited quantity of inventory since it was required to pay cash and that such inventory could not generate the amount of sales estimated by the Audit Division.

6. Reasonable cause does not exist for the abatement of the penalty and interest imposed pursuant to section 1145(a) of the Tax Law.

#### CONCLUSIONS OF LAW

A. That the Audit Division, in the absence of books and records, properly

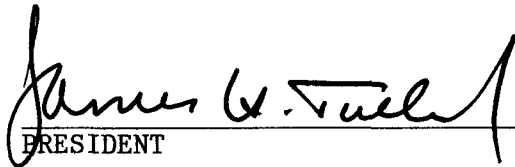
determined the additional sales taxes due from petitioner based on such information as was available in accordance with the provisions of section 1138(a) of the Tax Law.

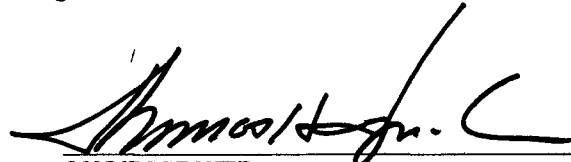
B. That the petition of Cool Spot Lounge, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 11, 1978 is sustained.

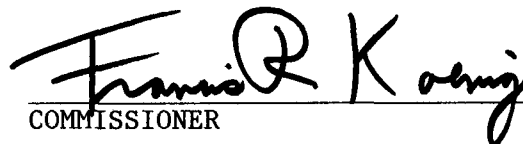
DATED: Albany, New York

STATE TAX COMMISSION

DEC 12 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER