

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Richard Corbisiero :  
d/b/a Riccardo's : 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 6/1/70-5/31/73. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Richard Corbisiero, d/b/a Riccardo's, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

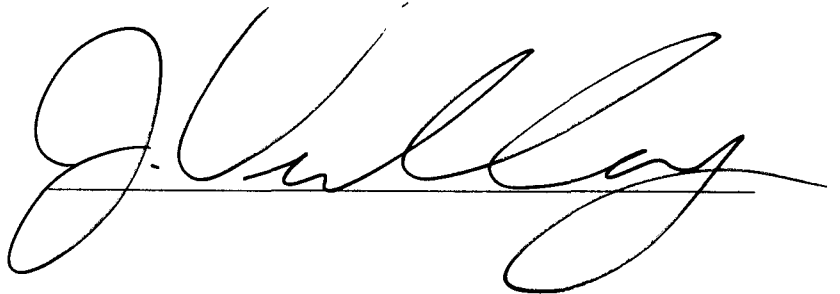
Richard Corbisiero  
d/b/a Riccardo's  
21-01 24th Ave.  
Long Island City, NY 11102

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  
13th day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Richard Corbisiero :  
d/b/a Riccardo's : 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 6/1/70-5/31/73. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Albert Podrid 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. Albert Podrid  
275 Madison Ave.  
New York, NY 10016

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  
13th day of February, 1980.

Joanne Krapp

J. Vredenburg

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

February 13, 1980

Richard Corbisiero  
d/b/a Riccardo's  
21-01 24th Ave.  
Long Island City, NY 11102

Dear Mr. Corbisiero:

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  
Albert Podrid  
275 Madison Ave.  
New York, NY 10016  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
RICHARD CORBISIERO	:	DETERMINATION
D/B/A RICCARDO'S	:	
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, 1970 through May 31, 1973.	:	

---

Applicant, Richard Corbisiero d/b/a Riccardo's, 21-01 24th Avenue, Long Island City, New York 11102, 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, 1970 through May 31, 1973 (File No. 13016).

A formal hearing was scheduled at the offices of the State Tax Commission, Two World Trade Center, New York, New York, for February 18, 1977. On February 16, 1977, applicant's representative, Albert Podrid, Esq., advised the State Tax Commission in writing that applicant waived a formal hearing and submitted the case to the State Tax Commission on the entire record in the file. The State Tax Commission renders the following determination after due consideration of said record.

ISSUE

Whether applicant is liable for additional sales taxes asserted pursuant to audit for the periods June 1, 1970 through May 31, 1973.

FINDINGS OF FACT

1. On March 18, 1975, 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 Richard Corbisiero, in the amount of \$108,285.33, plus penalty and interest, for the period June 1, 1970 through May 31, 1973.

2. Applicant, Richard Corbisciero, operated a restaurant in Long Island City, New York. The restaurant consisted of a bar, a dining room and six rooms used essentially for catering affairs. Timely New York State and local sales and use tax returns for the periods in issue were filed, as was the petition received June 6, 1975 for revision of the above determination.

3. An audit of applicant's restaurant in October, 1973 utilized the purchase markup method on beer, liquor and food. Beer markup was computed to be 560.74 percent, liquor 296.62 percent and food 125 percent (the beer and liquor markup percentages were based on tests of applicant's purchases for May, 1973). Non-taxable sales for the period March 1, 1973 to March 31, 1973 were tested and 59.21 percent were allowed. Guest checks and catering bills were tested for overcollection and an overcollection percentage of .76 percent was found. Fixed asset purchase invoices for the period in issue were examined and \$11,695.26 in such purchases were found to be taxable, and not paid. Expense purchase invoices were found to be proper. Tax on parking was also included.

4. On December 18, 1974, at a conference with applicant's representative, the Sales Tax Bureau determined that it was reasonable to reduce food markup to 100 percent, liquor markup to 250 percent and beer to 460 percent.

5. Applicant offered no documentary or other substantial evidence that the markups on food, wine and liquor were not reasonable, that tax was paid on fixed asset purchases, that the overcollection was incorrect or that tax was paid on parking.

#### CONCLUSIONS OF LAW

A. That applicant mailed a timely application for revision of the notice dated March 18, 1975. Jurisdiction for the Commission to review the taxes assessed exists.

B. That the food markup is 100 percent, liquor markup 250 percent and beer markup 460 percent.

C. That there is unpaid tax on fixed asset purchases and on parking receipts.

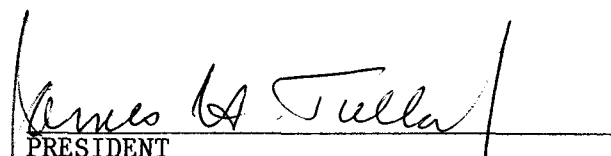
D. That applicant did not meet its burden of proof regarding markups on food, wine and liquor and on unpaid purchases and on parking receipts.


E. That the application of Richard Corbisiero d/b/a Riccardo's is granted to the extent indicated in Conclusion of Law "B" above; that the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 18, 1975 by the Sales Tax Bureau; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York

**FEB 13 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER