

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dekalb Franklin Liquor Mart :
Division of DFLM Corp. : 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 9/1/72-8/31/75. :

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 7th day of July, 1980, he served the within notice of Determination by mail upon Dekalb Franklin Liquor Mart, Division of DFLM Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dekalb Franklin Liquor Mart
Division of DFLM Corp.
501 Dekalb Ave.
Brooklyn, NY 11205

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
7th day of July, 1980.

Deborah A Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dekalb Franklin Liquor Mart :
Division of DFLM Corp. : 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 9/1/72-8/31/75. :

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 7th day of July, 1980, he served the within notice of Determination by mail upon Stephen W. Schlissel 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. Stephen W. Schlissel
Lippe, Ruskin, Schlissel & Moscov, P.C.
114 Old Country Road
Mineola, NY 11501

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
7th day of July, 1980.

Deborah A. Bank

J. Vredenburg

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

July 7, 1980

Dekalb Franklin Liquor Mart
Division of DFLM Corp.
501 Dekalb Ave.
Brooklyn, NY 11205

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
Stephen W. Schlissel
Lippe, Ruskin, Schlissel & Moscov, P.C.
114 Old Country Road
Mineola, NY 11501
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
DEKALB FRANKLIN LIQUOR MART	:	
DIVISION OF DFLM CORPORATION	:	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 September 1, 1972 through	:	
August 31, 1975.	:	

Applicant, Dekalb Franklin Liquor Mart, Division of DFLM Corporation, 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 September 1, 1972 through August 31, 1975 (File No. 14529).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 23, 1979 at 1:15 P.M. and continued on October 30, 1979 at 1:15 P.M. Applicant appeared by Stephen W. Schlissel and Benjamin Weinstock, Esqs. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division used the proper selling prices in determining the markup of applicant's liquor purchases.

FINDINGS OF FACT

1. On April 14, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Dekalb Franklin

Liquor Mart, Division of DFLM Corporation for the period September 1, 1972 through August 31, 1975. The Notice was issued in the amount of \$21,493.80 tax, plus penalties and interest.

2. Applicant executed a consent extending the period of limitation for assessment to December 19, 1976.

3. The Notice was issued as a result of a field audit. In the performance of the audit, the Audit Division determined a markup on applicant's liquor and wine purchases by using one current month's purchases and selling prices on labels affixed to bottles in inventory. The computed markups were applied to the appropriate purchases for the audit period and taxable sales determined. After deduction of the reported taxable sales, an additional tax liability of \$21,493.80 was assessed.

4. Applicant contended that the selling prices used in determining the markup for liquor included the sales tax. Applicant produced a list of selling prices in effect at the time of the audit. The list consisted of brand names of liquor offered for sale, the selling price of each brand, the appropriate amount of tax to be charged, and the total of the components. The use of the price list was confirmed in the audit workpapers.

5. Applicant's store labels affixed to the individual bottles were for inventory control. The label contained information as to a code number for the product designating brand name and size, and a selling price including sales tax. The label was removed at the cash register and retained by applicant. The amount on the label was rung up on the cash register. The customer was not given any receipt or other memorandum of the sales price.

6. A sign was displayed on the premises indicating "All Prices Include Sales Tax".

7. Applicant computed its sales tax liability by dividing its gross receipts by 100 percent plus the appropriate tax rate and remitted the tax thereon.

CONCLUSIONS OF LAW

A. That the selling prices used by the Audit Division in determining the markup on applicant's liquor purchases included the sales tax charged its customers; therefore, the liquor markup was overstated by the amount of the tax collected thereon.

B. That the markup of liquor purchases is adjusted to show the actual selling price of liquor excluding the sales tax.

C. That the application of the revised markup results in no additional sales tax liability; therefore, the application of Dekalb Franklin Liquor Mart, Division of DFLM Corporation is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 14, 1976 is cancelled.

DATED: Albany, New York

JUL 07 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER