

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Jodana Cafe, Inc. :  
d/b/a Beef & Ale : 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 9/1/71-8/25/75. :

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Jodana Cafe, Inc., d/b/a Beef & Ale, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jodana Cafe, Inc.  
d/b/a Beef & Ale  
30 S. Broadway  
Yonkers, NY

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  
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Jodana Cafe, Inc. :  
d/b/a Beef & Ale : 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 9/1/71-8/25/75. :

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 22nd day of February, 1980, he served the within notice of Determination by mail upon William N. Carroll the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

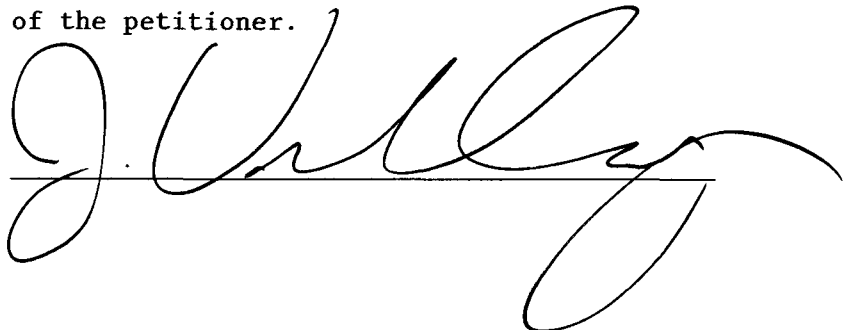
Mr. William N. Carroll  
34 So. Broadway  
White Plains, NY 10601

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  
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

Jodana Cafe, Inc.  
d/b/a Beef & Ale  
30 S. Broadway  
Yonkers, NY

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  
William N. Carroll  
34 So. Broadway  
White Plains, NY 10601  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :

of :

JODANA CAFE, INC. :  
D/B/A BEEF & ALE :

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 Periods September 1, :  
1971 through August 31, 1974 and September 1, :  
1974 through August 25, 1975.

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Jodana Cafe, Inc. d/b/a Beef & Ale, c/o William Carroll, 30 South Broadway, Yonkers, New York 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 periods September 1, 1971 through August 31, 1974 and September 1, 1974 through August 25, 1975 (File No. 16892).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 21, 1978 at 2:45 P.M. Applicant appeared by William N. Carroll, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

#### ISSUES

- I. Whether applicant is liable for additional sales taxes asserted pursuant to an audit, with respect to the period September 1, 1971 through August 31, 1974.
- II. Whether applicant filed a timely application with respect to this period.
- III. Whether applicant is liable for additional taxes asserted pursuant to an audit, with respect to the period September 1, 1974 through August 25, 1975.

FINDINGS OF FACT

1. Applicant, Jodana Cafe, Inc. d/b/a Beef & Ale, filed timely New York State and local sales and use tax returns for the periods September 1, 1971 through August 31, 1974 and September 1, 1974 through August 25, 1975.

2. A Notice and Demand for Payment of Sales and Use Taxes Due for the period September 1, 1971 through August 31, 1974 for \$15,827.73 in sales taxes, plus \$6,215.46 in penalties and interest, for a total of \$22,043.19, was issued to applicant on November 7, 1975.

3. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period September 1, 1974 through August 25, 1975 in the amount of \$11,731.68 in sales taxes, plus \$3,781.81 in penalties and interest, for a total of \$15,513.49, was issued to applicant on September 1, 1976.

4. Applicant subsequently filed applications for revision of the determinations issued November 7, 1975 and September 1, 1976.

5. Applicant agreed to the use of the month of May, 1974 as a test period. Sales for this month were typical of applicant's usual business activity. Accurate records of applicant's purchases were also readily available for this month.

6. The auditor for the Sales Tax Bureau made an unannounced visit to applicant's place of business to observe applicant's operations. The auditor observed and measured the amount of liquor, wine and beer that was contained in a typical serving made by applicant. The auditor determined a markup percentage for liquor, wine and beer sold by applicant by comparing the measured amount of liquid per serving to the total purchases of liquor, wine and beer for the test period and then, to prices observed by or quoted to auditor. The markup percentage for liquor was 411.8 percent, for wine it was 142.9 percent and for beer it was 294.4 percent.

7. The auditor also determined, for the same period, a typical markup for food sold by applicant. However, the auditor did not consider the high cost of

the quality food that applicant served, applicant's advertised specials which involved the sale of food at less than the average markup and applicant's menu prices in determining a markup percentage for food.

CONCLUSIONS OF LAW

A. That applicant mailed a timely application for revision of the notice dated November 7, 1975; and that jurisdiction for the commission to review the taxes asserted therein exists.

B. That applicant's food markup is computed to be 82 percent, but applicant did not meet its burden of proof that the liquor, wine and beer markups were incorrect.

C. That the application of Jodana Cafe, Inc. d/b/a Beef & Ale is granted to the extent indicated in Conclusion of Law "B" above; and, that except as so granted, is in all other respects denied. The Audit Division is hereby directed to revise the two notices accordingly. As revised, the notices are sustained.

DATED: Albany, New York

**FEB 22 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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of :  
Jodana Cafe, Inc. :  
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of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law :  
for the Period 9/1/71-8/25/75. :

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 14th day of March, 1980, he served the within notice of Determination by mail upon Jodana Cafe, Inc., d/b/a Beef & Ale House, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jodana Cafe, Inc.  
d/b/a Beef & Ale House  
5693 Riverdale Ave.  
Bronx, NY 10471

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  
14th day of March, 1980.

Joanne Knapp

J. Vredenburg