

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Henry Lampe, Inc. :
d/b/a Sea Breeze : 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 9/1/71-2/28/75. :

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 25th day of January, 1980, he served the within notice of Determination by mail upon Henry Lampe, Inc., d/b/a Sea Breeze, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry Lampe, Inc.
d/b/a Sea Breeze
810 Miller Ave.
Freeport, NY 11520

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
25th day of January, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Henry Lampe, Inc. :
d/b/a Sea Breeze : 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 9/1/71-2/28/75. :

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 25th day of January, 1980, he served the within notice of Determination by mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs
Canale & Gerardi
72 S. Grove St.
Freeport, NY 11520

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
25th day of January, 1980.

Joanne Knapp

J. J. Vredenburg

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

January 25, 1980

Henry Lampe, Inc.
d/b/a Sea Breeze
810 Miller Ave.
Freeport, NY 11520

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
Canale & Gerardi
72 S. Grove St.
Freeport, NY 11520
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HENRY LAMPE, INC.	:	DETERMINATION
D/B/A SEA BREEZE	:	
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, 1971 through	:	
February 28, 1975.	:	

Applicant, Henry Lampe, Inc. d/b/a Sea Breeze, 810 Miller Avenue, Freeport, New York 11520, 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, 1971 through February 28, 1975 (File No. 14756).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 16, 1978 at 2:45 P.M. Applicant appeared by Joseph Canale and Joseph Gerardi, CPA's. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the result of an audit performed by the Sales Tax Bureau properly reflects applicant's sales tax liability for the period September 1, 1971 through February 28, 1975.

FINDINGS OF FACT

1. Applicant, Henry Lampe, Inc., operated a bar and restaurant called the "Sea Breeze" in Freeport, New York.

2. Applicant filed and paid New York state and local sales and use tax returns for all tax periods from September 1, 1971 through February 28, 1975.

3. On March 29, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Henry Lampe, Inc. - Sea Breeze, and Otto Kunz-officer, for the period September 1, 1971 through February 28, 1975. The Notice asserted sales tax due of \$9,936.87, plus penalty and interest of \$4,408.85, for a total due of \$14,345.72. The determination was the result of a Sales Tax Bureau audit for the period September 1, 1971 through May 31, 1974, which results were then projected over the period September 1, 1971 to February 28, 1975.

4. Timely-filed consents extending the period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law had been obtained by the Sales Tax Bureau.

5. Applicant had a complete set of books and records. On audit, the sales per books agreed with sales reported on Federal corporation income tax returns and on New York State sales tax returns.

6. All sales tax which applicant collected was reported and paid over to the State.

7. The assessment was based on marked-up purchases of food, beer, wine and liquor. The beer markup was based on actual record figures; however, the food, wine and liquor markups were based on estimates.

8. Applicant contends that there were adequate books and records available for audit, and that the Sales Tax Bureau should not have used estimates as the basis of the wine, liquor and food markups.

CONCLUSIONS OF LAW

A. That applicant, Henry Lampe, Inc. d/b/a Sea Breeze, had a complete set of bills, receipts, books and records, according to the sales tax examiner.

B. That available information indicates that the audit procedures used did not conform with the standard audit procedures which have been established and developed, and which are normally used when a complete set of books and records are available.

C. That the Sales Tax Bureau did not establish that the returns filed by applicant were incorrect or insufficient; accordingly, the Notice of Determination and Demand for Payment of Sales and Use Taxes Due was improperly issued, in accordance with the intent and meaning of section 1138(a) of the Tax Law.

D. That the application of Henry Lampe, Inc. d/b/a Sea Breeze, is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on March 29, 1976 is cancelled.

DATED: Albany, New York

JAN 25 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER