

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
George Monier :
d/b/a Kozy Korner : 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 Years 3/71-5/71 & 9/71-11/74. :

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 11th day of January, 1980, he served the within notice of Determination by mail upon George Monier, d/b/a Kozy Korner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

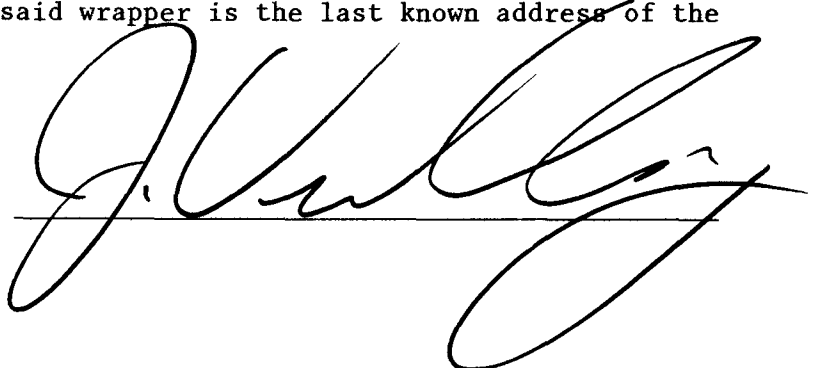
George Monier
d/b/a Kozy Korner
6002-15 Ave.
Brooklyn, NY 11215

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
11th day of January, 1980.

Joanne Knapp

A large, stylized handwritten signature, likely of Jay Vredenburg, written in black ink over a horizontal line.

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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 11th day of January, 1980, he served the within notice of Determination by mail upon Emanuel Chartash the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

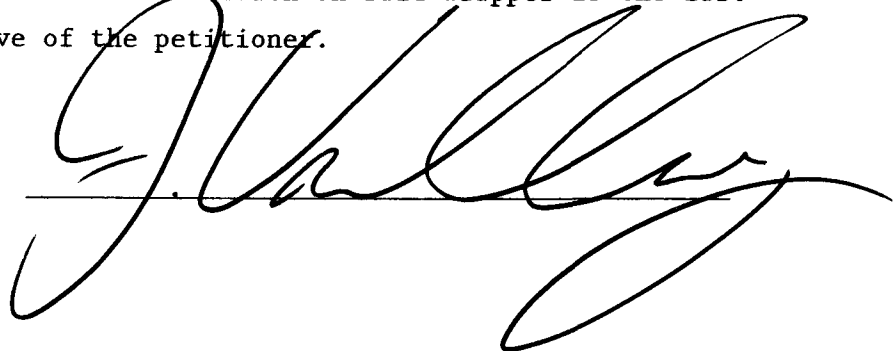
Mr. Emanuel Chartash
6217 18th Ave.
Brooklyn, NY

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 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
11th day of January, 1980.

Joanne Knapp



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

January 11, 1980

George Monier
d/b/a Kozy Korner
6002-15 Ave.
Brooklyn, NY 11215

Dear Mr. Monier:

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
Emanuel Chartash
6217 18th Ave.
Brooklyn, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
GEORGE MONIER	:	DETERMINATION
d/b/a KOZY KORNER	:	
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 March 1, 1971 through May 31, 1971	:	
and September 1, 1971 through November 30,	:	
1974.	:	

Applicant, George Monier d/b/a Kozy Korner, 6002 15th Avenue, Brooklyn, New York 11215, 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 March 1, 1971 through May 31, 1971 and September 1, 1971 through November 30, 1974 (File No. 14037).

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 September 29, 1978. Applicant appeared by Emanuel Chartash, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Robert N. Felix, Esq., of counsel).

ISSUES

I. Whether the Consent Extending Period of Limitation for Assessment of Sales and Use Taxes for the period March 1, 1971 through May 31, 1971, executed by applicant, was proper.

II. Whether the results of the audit conducted by the Sales Tax Bureau properly reflected applicant's sales and use tax liability.

FINDINGS OF FACT

1. Applicant, George Monier d/b/a Kozy Korner, operated a bar and grill

at 6002 15th Avenue, Brooklyn, New York. Applicant filed sales and use tax returns for the period March 1, 1971 through November 30, 1974.

2. Applicant's sales and use tax returns for the periods March 1, 1971 through May 31, 1971 and September 1, 1971 through November 30, 1971 were filed November 28, 1972 and May 30, 1972, respectively.

On March 19, 1975, applicant executed two Consents Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law. One consent, covering the period March 1, 1971 through May 31, 1971, was not signed by a representative of the State Tax Commission in the space provided therefor. The second consent covered the period September 1, 1971 through November 30, 1974 and was signed by a representative of the State Tax Commission.

3. On January 30, 1976, 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 (Notice No. 90,758,174) against applicant for the periods March 1, 1971 through May 31, 1971 and September 1, 1971 through November 30, 1974, which imposed additional sales and use taxes due of \$8,121.49, plus penalty and interest.

4. On audit, the Sales Tax Bureau compared liquor purchases and beer purchases with corresponding selling prices for May 1974 and arrived at a liquor markup of 265.27 percent and a beer markup of 356.39 percent. A 15 percent spillage allowance was made for liquor. Food purchases were marked up an estimated 125 percent.

The Sales Tax Bureau applied the above markup percentages to the respective purchases for the audit period and added the cost of soda purchases of \$3,015.17 to arrive at additional taxable sales of \$110,112.91 and additional sales tax due of \$7,899.68.

Tangible personal property in the amount of \$3,696.84 was found to have been acquired without tax having been paid (period ended May 31, 1971). A compensating use tax was assessed in the amount of \$221.81.

5. Applicant's soda purchases of \$3,015.17 were used to make mixed drinks. Also, 15 percent of applicant's draft beer purchases was spillage.

6. Applicant contended that the Consent Extending Period of Limitation for Assessment of Sales and Use Taxes for the period March 1, 1971 through May 31, 1971 was improperly completed in that the consent was not signed by the State Tax Commission.

7. Applicant also contended that there were thefts of merchandise which were not considered in the audit findings. Applicant did not present any documentary evidence to support this contention.

CONCLUSIONS OF LAW

A. That the Consent Extending Period of Limitation for Assessment of Sales and Use Taxes executed by applicant, for the period March 1, 1971 through May 31, 1971, was proper within the meaning and intent of section 1147(c) of the Tax Law which provides, in part, that where, before the expiration of the period prescribed for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. While Form ST-578, Consent Extending Period of Limitation, contains a space for the signature of a representative of the State Tax Commission, such signature is not required by section 1147(c) of the Tax Law.

B. That the assessment was erroneous in that the audit performed by the Sales Tax Bureau did not give adequate consideration to applicant's business operation; that an allowance of 15 percent is made for spillage of draught beer and that the soda purchases of \$3,015.17, used to make mixed drinks, are

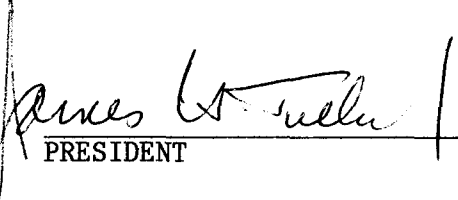
deleted from additional taxable sales.

C. That the application of George Monier d/b/a Kozy Korner is granted to the extent indicated in Conclusion of Law "B". The Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 30, 1976. Except as so granted, the application is in all other respects denied.

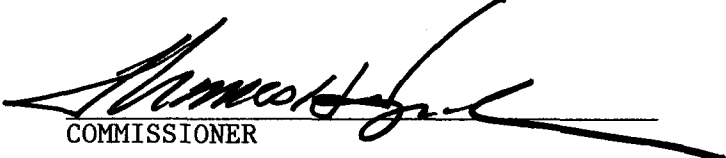
DATED: Albany, New York

STATE TAX COMMISSION

JAN 11 1980


PRESIDENT


COMMISSIONER


COMMISSIONER