

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Space Port Restaurant, Inc. :
and Peter Lauria : 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 6/1/72-5/31/73. :

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 20th day of June, 1980, he served the within notice of Determination by mail upon Space Port Restaurant, Inc., and Peter Lauria, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

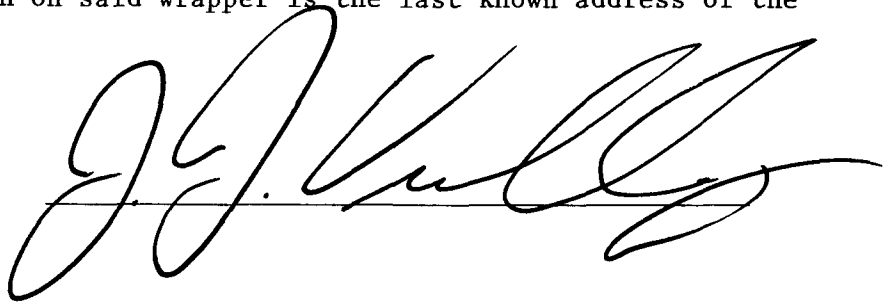
Space Port Restaurant, Inc.
and Peter Lauria
147-17 12th Ave.
Flushing, NY 11357

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
20th day of June, 1980.

Joanne Krapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Space Port Restaurant, Inc. :
and Peter Lauria : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
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for the Period 6/1/72-5/31/73. :

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 20th day of June, 1980, he served the within notice of Determination by mail upon Joseph J. Risi 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. Joseph J. Risi
Marmarellis & Risi, Esqs.
26-13 23rd Ave.
Long Island City, NY 11105

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
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 20, 1980

Space Port Restaurant, Inc.
and Peter Lauria
147-17 12th Ave.
Flushing, NY 11357

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
Joseph J. Risi
Marmarellis & Risi, Esqs.
26-13 23rd Ave.
Long Island City, NY 11105
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SPACE PORT RESTAURANT, INC.	:	DETERMINATION
and Peter Lauria	:	
	:	
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, 1972	:	
through May 31, 1973.	:	

Applicant, Space Port Restaurant, Inc. and Peter Lauria, 147-17 12th Avenue, Flushing, New York 11357, 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, 1972 through May 31, 1973 (File No. 11097).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 20, 1979 at 2:45 P.M. Applicants appeared by Peter Lauria, President and Joseph Risi, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau's estimate of applicants' sales for the period June 1, 1972 through Mar 31, 1973 accurately reflected applicants' sales tax liability.

FINDINGS OF FACT

1. On August 15, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant Space Port Restaurant, Inc. for the period June 1, 1972 through May 31, 1975. The notice was issued for \$17,901.10, plus penalty and interest of \$5,000.87, for a total of \$22,901.97.

A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was also issued against applicant Peter Lauria individually and as officer of Space Port Restaurant, Inc. for the period June 1, 1972 through May 31, 1973. This notice was issued for \$5,579.80, plus penalty and interest of \$1,916.77 for a total of \$7,496.57.

Said notices were issued after the Sales Tax Bureau failed in several attempts to obtain books and records to conduct an audit of Space Port Restaurant, Inc.

2. Applicants, Space Port Restaurant, Inc. and Peter Lauria, filed an application for a hearing to review the aforementioned determinations for the period June 1, 1972 through May 31, 1973. The sales taxes assessed against applicant Space Port Restaurant, Inc. for the period June 1, 1973 through May 31, 1975 are not at issue since there was no application for hearing filed for that period.

3. Applicant Space Port Restaurant, Inc. operated a tavern located at 63-12 Broadway, Woodside, New York. Peter Lauria was the sole stockholder of said corporation until June 9, 1973, at which time he sold all of the issued and outstanding stock to John J. Fitzgerald and Frank Casalino for the sum of \$21,000.00.

Approximately two years later, Fitzgerald and Casalino discontinued business operations and vacated the premises.

4. During the period from February, 1975 through June, 1975, the Sales Tax Bureau was unable to obtain the books and records of Space Port Restaurant, Inc. from the corporate principals John J. Fitzgerald or Frank Casalino, or from the corporation accountant. The Sales Tax Bureau contacted applicant, Peter Lauria; however, he was unable to furnish the books and records because they remained on the business premises of the corporation in the possession of the new corporate officers.

As a result, the Sales Tax Bureau estimated the sales of Space Port Restaurant, Inc. to be \$25,000.00 per quarter for a total of \$300,000.00 for the period June 1, 1972 through May 31, 1975. Reported sales of \$54,898.00 were deducted from that amount, leaving additional sales of \$245,102.00 and tax due thereon of \$17,901.00. Applicant Peter Lauria was held personally liable for taxes due in the amount of \$5,579.80 for the period June 1, 1972 through May 31, 1973 during which time he was the responsible officer of Space Port Restaurant, Inc.

The Sales Tax Bureau claimed the estimated sales were based on the prior experience of the auditor and the other businesses of similar size and location.

5. Applicants timely filed New York State and local sales and use tax returns for the period June 1, 1972 through May 31, 1973 reporting the following sales and sales tax due:

<u>Period Ending</u>	<u>Sales</u>	<u>Tax Due</u>
August 31, 1972	\$5,698.60	\$398.90
November 30, 1972	\$6,556.00	\$458.95
February 28, 1973	\$4,160.55	\$291.25
May 31, 1973	\$3,877.90	\$271.50

6. Applicant Space Port Restaurant, Inc. reported gross sales of \$22,570.05 on its U.S. Small Business Corporation Income Tax Return filed for 1972. Said return showed cost of goods sold in the amount of \$5,752.14 and gross profit of \$16,817.91 which reflects a markup percentage of 292 percent.

7. The premises of the business comprised approximately 1,600 square feet. There were 10 or 12 bar stools and limited table facilities. During the period in issue, the average selling price of a liquor drink was 65 cents. Meals were not served. Applicant Peter Lauria was the only employee. The applicant began business daily at 4:00 P.M.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau's estimate of applicants' sales did not give consideration to the following facts:

1. Sales price of corporate stock in relation to its estimated sales,
2. Selling prices of drinks, physical size of the premises, hours of operation and number of employees,
3. Sales per income tax returns and reported markups. Therefore, such estimate did not reasonably nor accurately reflect the business activity. The additional sales taxes determined by the Sales Tax Bureau for the period June 1, 1972 through May 31, 1973 in the amount of \$5,579.80 are cancelled.

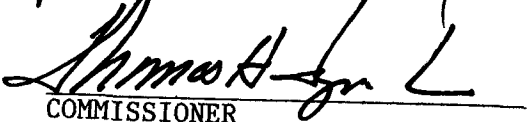
B. That the application of Peter Lauria is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 15, 1975 is cancelled; that the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 15, 1975 against Spage Port Restaurant, Inc. by cancelling the sales taxes due for the period June 1, 1972 through May 31, 1973.

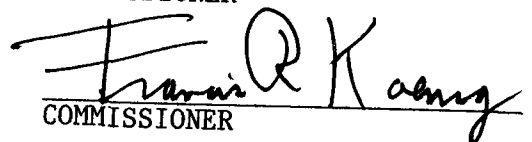
DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER