

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Union Station Rest., Inc. :  
c/o David H. Goldstein : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use & Personal Income Tax :  
under Article 28, 29 & 22 of the Tax Law :  
for the Period 12/1/73-11/30/74. :

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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Union Station Rest., Inc., c/o David H. Goldstein, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Union Station Rest., Inc.  
c/o David H. Goldstein  
329 Evans St.  
Williamsville, NY 14221

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  
4th day of April, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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of :  
Union Station Rest., Inc. :  
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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 4th day of April, 1980, he served the within notice of Decision by certified mail upon Donald J. Holzman 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. Donald J. Holzman  
Duke, Holzman, Yarger & Radlin  
2410 Main Place Tower  
Buffalo, NY 14202

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  
4th day of April, 1980.

Joanne Knapp

J. Vredenburg

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

April 4, 1980

Union Station Rest., Inc.  
c/o David H. Goldstein  
329 Evans St.  
Williamsville, NY 14221

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1139, 1243 & 690 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  
Donald J. Holzman  
Duke, Holzman, Yarger & Radlin  
2410 Main Place Tower  
Buffalo, NY 14202  
Taxing Bureau's Representative



the amount of \$18,174.15, plus penalty and interest of \$3,507.65, for a total of \$21,681.80.

Also on December 18, 1974, the Audit Division issued a Notice of Determination and Demand Under Jeopardy for Payment of Sales and Use Taxes Due against petitioner for the period September 1, 1974 through November 30, 1974 in the amount of \$10,000.00.

Said notices were issued in accordance with the provisions of sections 1137 and 1138(b) of the Tax Law, respectively.

2. The State Tax Commission filed a warrant on December 18, 1974 against David H. Goldstein, responsible officer of petitioner, Union Station Restaurant, Inc., for unpaid sales taxes in the amount of \$28,174.15, plus penalty and interest of \$3,507.65, for a total of \$31,681.80.

3. On January 10, 1978, petitioner, after several years of litigation with its insurance carrier, received a settlement of \$377,500.00 and on the same date made payment to the State Tax Commission in the amount of \$49,830.40 pursuant to a tax collectors levy dated November 29, 1977. Said levy consisted of the following unpaid taxes: sales taxes of \$27,155.50 (The notice issued under jeopardy in the amount of \$10,000.00 was subsequently adjusted to \$8,981.25.), New York State withholding taxes of \$822.89 and penalty and interest of \$21,852.01.

4. On January 10, 1978, petitioner, Union Station Restaurant, Inc., filed a petition (TA-11) which the Audit Division deemed to be an application for refund. Petitioner requested a refund of the penalty and that portion of interest in excess of the minimum statutory rate that it paid for the period subsequent to December 17, 1974. Petitioner estimated such amount to be approximately \$11,887.79.

5. On March 6, 1978, the Audit Division denied the refund claim based on petitioner's record of tax payments for periods prior to December 17, 1974.

6. Petitioner operated a restaurant known as "Union Station" in Lockport, New York until December 17, 1974, at which time a fire totally destroyed the business. Petitioner filed an insurance claim with its carrier, however, the carrier refused to pay the claim alleging the petitioner's policy had been cancelled for failure to pay a premium. On December 8, 1975, petitioner instituted legal proceedings against the insurance carrier by filing a summons and complaint. Petitioner was awarded summary judgment as to the insurance carrier's liability which award was affirmed by the Appellate Division, Fourth Department, on November 4, 1977 and for which leave to appeal to the New York State Court of Appeals was denied. On January 10, 1978, petitioner entered into a Stipulation of Settlement with the insurance carrier which provided for damages of \$377,500.00.

7. Petitioner contended that because of the extensive litigation as described herein above, it was unable to make earlier payment of the tax liability and that such delay was excusable.

8. Petitioner filed New York state and local sales and use tax returns for the period December 1, 1973 through August 31, 1974 without payment or a partial payment of the sales taxes due as reported thereon.

#### CONCLUSIONS OF LAW

A. That petitioner collected sales taxes as trustee for and on account of the State of New York and failed to pay over the same to the State Tax Commission as required by section 1137 of the Tax Law; that petitioner's delay in receiving insurance proceeds caused by the litigation set forth in Finding of Fact "6", is not excusable delay for the payment of sales taxes.

B. That with respect to the withholding taxes, section 675 of the Tax Law provides that said taxes shall be held to be a special fund in trust for the Tax Commission and therefore, petitioner did not have reasonable cause for

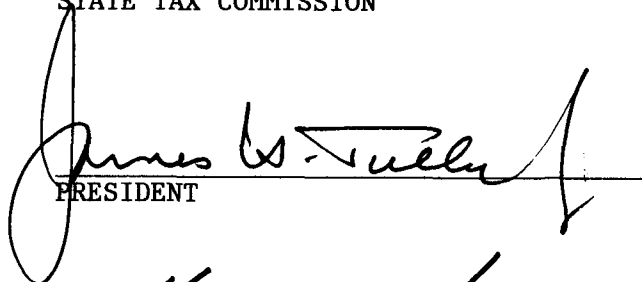
its failure to pay withholding taxes as required by section 674(a) of the Tax Law.

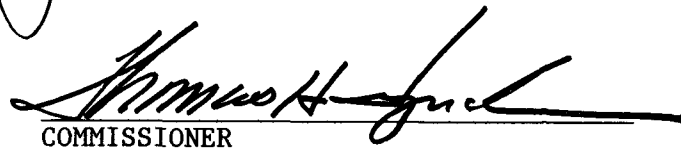
C. That the petition of Union Station Restaurant, Inc. is denied and the refund denial by the Audit Division is sustained.

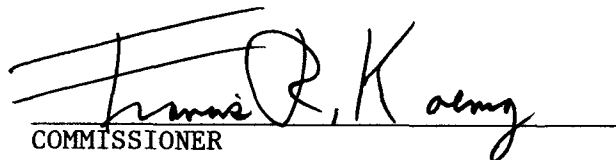
DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER