

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leo Brenner :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Articles 28 & 29 of the Tax Law :
for the Years 1972 - 1975. :

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 1st day of May, 1981, he served the within notice of Decision by mail upon Leo Brenner, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leo Brenner
2841 Broadway
New York, NY 10025

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
1st day of May, 1981.

Bonnie P. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leo Brenner :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Articles 28 & 29 of the Tax Law :
for the Years 1972 - 1975. :

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 1st day of May, 1981, he served the within notice of Decision by mail upon Herbert K. Redbord 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. Herbert K. Redbord
1440 Broadway
New York, NY 10018

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
1st day of May, 1981.

Carrie A. Baylond

J. Vredenburg

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

May 1, 1981

Leo Brenner
2841 Broadway
New York, NY 10025

Dear Mr. Brenner:

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) 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
Herbert K. Redbord
1440 Broadway
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEO BRENNER	:	DECISION
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 March 1, 1972 through May 31,	:	
1975.	:	

Petitioner, Leo Brenner, 2841 Broadway, New York, New York 10025, filed a petition 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 March 1, 1972 through May 31, 1975 (File No. 14907).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1978 at 2:45 P.M. Applicant appeared by Herbert K. Redbord, Esq. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the audit of petitioner's books and records by the Audit Division and the findings derived therefrom were proper and correct.

FINDINGS OF FACT

1. Petitioner, Leo Brenner, operated a liquor store at 2841 Broadway, New York, New York during the period March 1, 1972 through May 31, 1975.

2. On March 12, 1976, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for taxes due of \$7,622.00, plus penalty and interest, for the period March 1, 1972 through May 31, 1975. The petitioner executed

consents extending the time within which to issue an assessment of sales and use taxes for the period at issue to December 20, 1976.

3. Petitioner timely filed an application for a hearing to review the aforementioned notice of determination.

4. On audit, the Audit Division used the purchase markup method of audit. The auditor compared petitioner's ticketed sales prices for wines and liquors in May, 1975 to its cost per purchase invoice and determined the markup of 35.47 percent for liquor and 50.17 percent for wine. The auditor then applied the markup percentages to petitioner's total purchases for the audit period to determine the audited taxable sales. The audited taxable sales were \$104,936.00 greater than those reported by petitioner and accordingly assessed.

5. Petitioner argued that the wine and liquor business was highly competitive. Using the auditor's workpapers, but with sales prices shown in the May, 1975 issue of Beverage Media, petitioner determined that the mark-up percentages for liquor and wine were 25.27 percent and 42.77 percent, respectively. Petitioner further analyzed price tickets which were removed from bottles that were sold on March 3, 1975 and March 7, 1975 and determined a mark-up of 28.86 percent for liquor and 49.36 percent for wine. Petitioner contended that the difference in its audited sales and reported taxable sales was due to an increase in inventory, breakage, shrinkage, nontaxable sales, purchases on a split case basis and case lot sales.

6. The price tickets which petitioner had affixed to the bottles of wine and liquor contained information regarding the sales price, the applicable tax, the consumer's cost and petitioner's coded cost exclusive of any cash discount. Petitioner had not considered the cash discount allowed by suppliers as a reduction in its purchase price. Petitioner failed to establish that the sales prices shown on its price tickets were comparable to the prices reported in Beverage Media.

7. Petitioner submitted no documentation or other substantial evidence to support such items as an increase in inventory, breakage, shrinkage, non-taxable sales, purchases on a split case basis and case sales.

8. The books and records maintained by petitioner were not adequate for the Audit Division to determine the exact amount of petitioner's taxable sales or sales tax liability.

9. Petitioner at all times acted in good faith.

CONCLUSIONS OF LAW

A. That the audit was done in accordance with standard auditing procedures established by the Audit Division. The procedures used to determine petitioner's taxable sales were proper pursuant to section 1138(a) of the Tax Law. The resultant findings of additional sales tax due were supported by substantial documentary evidence. Petitioner failed to show that the determination of additional sales tax due was incorrect.

B. That the interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law are cancelled.

C. That the petition of Leo Brenner is granted to the extent indicated in Conclusion "B" above; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 12, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Leo Brener

:

:

: 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 3/1/72-5/31/75.

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 29th day of May, 1981, he served the within notice of Decision by mail upon Leo Brener, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leo Brener
1936 612th Street
Brooklyn, NY 11229

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
29th day of May, 1981.

Ann M. A. Haglund

J. Vredenburg

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

Remailed: May 29, 1981
May 1, 1981

Leo Brenner
1936 612th St.
Brooklyn, NY 11229

Dear Mr. Brenner:

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) 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
Herbert K. Redbord
1440 Broadway
New York, NY 10018
Taxing Bureau's Representative

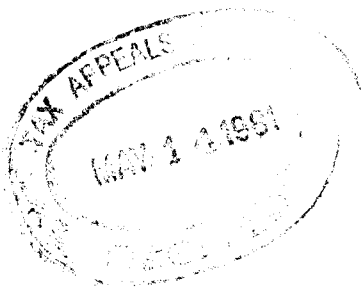
TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227


MOVED, NOT FORWARDABLE
NEW YORK, N.Y. 10025

Leo Brenner
2841 Broadway
New York, NY 10025

*Better Address
sent
5-15-81*





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

Remailed: May 29, 1981
~~May 1, 1981~~

Leo Brenner
1936 612th St.
Brooklyn, NY 11229

Dear Mr. Brenner:

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Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

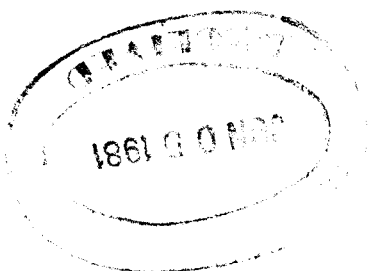
STATE TAX COMMISSION

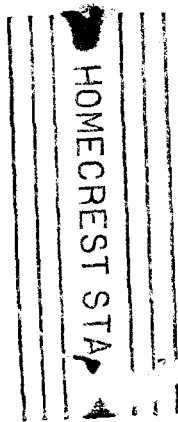
cc: Petitioner's Representative
Herbert K. Redbord
1440 Broadway
New York, NY 10018
Taxing Bureau's Representative

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Leo Brinner
1936 612th Street
Brooklyn, NY 11229





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEO BRENNER : DECISION
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 March 1, 1972 through May 31, :
1975. :

1936 62nd St., Brooklyn, NY 11224
Petitioner, Leo Brenner, ~~2841 Broadway, New York, New York 10025~~, filed
a petition 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 March 1, 1972
through May 31, 1975 (File No. 14907).

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Redbord, Esq. The Audit Division appeared by Peter Crotty, Esq. (Abraham
Schwartz, Esq., of counsel).

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and the findings derived therefrom were proper and correct.

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for the period March 1, 1972 through May 31, 1975. The petitioner executed

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4. On audit, the Audit Division used the purchase markup method of audit. The auditor compared petitioner's ticketed sales prices for wines and liquors in May, 1975 to its cost per purchase invoice and determined the markup of 35.47 percent for liquor and 50.17 percent for wine. The auditor then applied the markup percentages to petitioner's total purchases for the audit period to determine the audited taxable sales. The audited taxable sales were \$104,936.00 greater than those reported by petitioner and accordingly assessed.

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7. Petitioner submitted no documentation or other substantial evidence to support such items as an increase in inventory, breakage, shrinkage, non-taxable sales, purchases on a split case basis and case sales.

8. The books and records maintained by petitioner were not adequate for the Audit Division to determine the exact amount of petitioner's taxable sales or sales tax liability.

9. Petitioner at all times acted in good faith.

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B. That the interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law are cancelled.

C. That the petition of Leo Brenner is granted to the extent indicated in Conclusion "B" above; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 12, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

MAY 01 1981

MAY 29 1981

STATE TAX COMMISSION

James H. Sullivan
PRESIDENT

Thomas D. Sullivan
COMMISSIONER

Frank R. Krueger
COMMISSIONER