

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Hanratty's/732 Amsterdam Tavern, Inc. :  
Bradford Swett :  
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 6/1/73 - 5/31/76. :

AFFIDAVIT OF MAILING

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 27th day of February, 1981, he served the within notice of Decision by mail upon Hanratty's/732 Amsterdam Tavern, Inc., Bradford Swett, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hanratty's/732 Amsterdam Tavern, Inc.  
Bradford Swett  
732 Amsterdam Ave.  
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  
27th day of February, 1981.

Cornie A. Hagelund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Hanratty's/732 Amsterdam Tavern, Inc. :  
Bradford Swett :  
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 6/1/73 - 5/31/76. :

AFFIDAVIT OF MAILING

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 27th day of February, 1981, he served the within notice of Decision by mail upon Gerard A. Navagh 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. Gerard A. Navagh  
420 Lexington Ave.  
New York, NY 10017

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  
27th day of February, 1981.

Annie R. Hagelund

J. Vredenburg

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

February 27, 1981

Hanratty's/732 Amsterdam Tavern, Inc.  
Bradford Swett  
732 Amsterdam Ave.  
New York, NY 10025

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) 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  
Gerard A. Navagh  
420 Lexington Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_ :

In the Matter of the Petition :

of :

HANRATTY'S/732 AMSTERDAM TAVERN, INC. : DECISION

and BRADFORD SWETT :

for Revision of a Determination or for :  
Refund of Sales and Use Tax under Articles :  
28 and 29 of the Tax Law for the Period :  
June 1, 1973 through May 31, 1976. :

\_\_\_\_\_ :

Petitioners, Hanratty's/732 Amsterdam Tavern, Inc. and Bradford Swett, 732 Amsterdam Avenue, New York, New York 10025, filed a petition for revision of a determination or for refund of Sales and Use Tax under Articles 28 and 29 of the Tax Law for the period June 1, 1973 through May 31, 1976 (File No. 17677).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, at 9:15 A.M. on July 16, 1979. Petitioner appeared by Gerald A. Navagh, Esq. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the use by the state auditor of external indices in conducting its audit of Hanratty's/732 Amsterdam Tavern, Inc., was a necessary and proper use of such indices within the meaning of section 1138(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioner Hanratty's/732 Amsterdam Tavern, Inc., was a small neighborhood tavern located between 95th and 96th Street on Amsterdam Avenue, New York City, throughout the period herein involved. Bradford Swett owned the corporation and operated the business. The business was audited for the period June 1, 1973

through May 31, 1976, and petitioners were assessed for additional sales taxes in the amount of \$37,211.26, exclusive of penalties and interest. Petitioners contended that the auditing method used by the State auditors was improper.

2. Petitioners used an imprecise method of calculating sales tax due the state, throughout the period herein involved, computing such tax on the basis of 108 percent of sales. The State auditor from the Harlem branch office began a preliminary direct check of the accuracy of petitioners' computations of sales tax due for the audit period. She asked for and received the guest checks recording all sales on a single business day, February 25, 1976. The guest checks provided the state auditor were numbered in sequence but several gaps in those sequences made this type of direct check of sales tax due unreliable. Believing, as well, that petitioners' records and books did not truly reflect the volume of sales recorded by comparable business enterprises, the state auditor decided to do markup tests (described in Findings of Fact "3" and "4"), on beer, wine, liquor and food.

3. The State auditor in conducting her markup tests on liquor, beer and wine used petitioners' purchase invoices, glass sizes, and sales prices for a single business month falling in the audit period. An allowance of 15 percent was made for spoilage and waste. The State auditor determined that a 359 percent markup for beer, 324 percent markup for liquor, and 359 percent markup for wine were more truly reflective of petitioners' actual sales. This resulted in an increase in taxable sales of 38.44 percent and additional sales taxes assessed.

4. The State auditor used a standard 125 percent markup for food sold on petitioners' premises during the audit period. In the experience of the Audit Division this markup accurately reflected the markup actually used by tavern

businesses comparable to petitioners'. The markup resulted in the assessment of additional sales taxes for the audit period.

5. The method used by the State auditor in conducting her audit was proper under the circumstances. A direct check of petitioners' records by examination of guest checks was attempted but found unreliable because of unexplained sequential gaps.

CONCLUSIONS OF LAW

A. That the use by the State auditor of external indices in conducting its audit of petitioners was a necessary and proper use of such indices within the meaning of section 1138(a) of the Tax Law for the audit period. Petitioners are therefore liable for additional sales tax assessed for the period June 1, 1973 through May 31, 1976, under Articles 28 and 29 of the Tax Law.

B. That the petition of Hanratty's/732 Amsterdam Tavern, Inc. and Bradford Swett is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is sustained.

DATED: Albany, New York

FEB 27 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER