

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert H. Millard, Gerald Stahurski :
and William F. Melanson (purchasers) : 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 3/1/71 - 1/15/73. :

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 30th day of January, 1981, he served the within notice of Decision by mail upon Robert H. Millard, Gerald Stahurski, and William F. Melanson (purchasers), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert H. Millard, Gerald Stahurski
and William F. Melanson (purchasers)
3 South Ferry Rd. - Rt. 114
Shelter Island, NY 11964

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
30th day of January, 1981.

Cornie P. Hagelund.

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Robert H. Millard, Gerald Stahurski :
and William F. Melanson (purchasers) : **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 3/1/71 - 1/15/73. :

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 30th day of January, 1981, he served the within notice of Decision by mail upon Richard E. Miller 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. Richard E. Miller
60 Fire Island Ave.
Babylon, NY 11702

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
30th day of January, 1981.

Connie P. Hagelund

J. Vredenburg

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

January 30, 1981

Robert H. Millard, Gerald Stahurski
and William F. Melanson (purchasers)
3 South Ferry Rd. - Rt. 114
Shelter Island, NY 11964

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
Richard E. Miller
60 Fire Island Ave.
Babylon, NY 11702
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT H. MILLARD,	:	
GERALD STAHURSKI and	:	DECISION
WILLIAM F. MELANSON (Purchasers)	:	
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, 1971 through	:	
January 15, 1973.	:	

Petitioners, Robert H. Millard, Gerald Stahurski and William F. Melanson (Purchasers), 3 South Ferry Road, Route 114, Shelter Island, New York 11964, 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, 1971 through January 15, 1973 (File No. 10064).

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 September 14, 1976; March 14, 1978; July 17, 1978; and continued to completion on May 10, 1979. Petitioners appeared by Richard E. Miller, Esq. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Alexander Weiss and William Fox, Esqs., of counsel).

ISSUES

I. Whether the Notice of Determination and Demand for Payment of Sales and Use Taxes Due was timely issued against petitioners.

FINDINGS OF FACTS

1. In October, 1972, petitioners, Robert H. Millard, Gerald Stahurski and William F. Melanson, contracted with John Coffey, Josephine Coffey and

Dorothy H. Barning for the purchase of the Candelite Inn, a restaurant-bar located at 3 South Ferry Road, Shelter Island, New York.

2. On January 15, 1973, petitioners purchased the Candelite Inn for \$70,075.00.

3. Subsequent to the purchase, on January 31, 1973 petitioners submitted to the Audit Division by first class mail a Notification of Sale, Transfer or Assignment in Bulk.

4. On March 15, 1973, the Audit Division mailed a notice to petitioners regarding a possible claim for New York State and local sales and use taxes.

5. On August 17, 1973, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against John Coffey, Josephine Coffey and Dorothy Barning d/b/a Candelite Inn (Sellers) and petitioners, Robert H. Millard, Gerald Stahurski and William F. Melanson (Purchasers), assessing an estimated tax due of \$8,000.00, plus penalty and interest for the period March 1, 1971 through January 15, 1973.

6. The Audit Division based the aforesaid notice of determination on the fact that no sales tax returns had been filed for the Candelite Inn and on the fact that the sellers failed to respond to a sales tax questionnaire relative to the business activities of the Candelite Inn.

7. Petitioners, by letter of October 10, 1973, timely requested a hearing to review the notice of determination issued August 17, 1973.

CONCLUSIONS OF LAW

A. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against the purchasers, Robert H. Millard, Gerald Stahurski and William F. Melanson, was not timely. That section 1141(c) of the Tax Law provides:

"...Within one hundred-eighty days of receipt of the notice of the sale...the tax commission shall give notice to the purchaser... of the total amount of any tax or taxes which the state claims to be due from the seller...and whenever the tax commission shall fail to give such notice to the purchaser...such failure will release the purchaser...from any further obligation to withhold any sums of money"

That the Audit Division received notice of the sale on January 31, 1973 and gave notice to the purchasers, Robert H. Millard, Gerald Stahurski and William F. Melanson, of taxes due from the seller on August 17, 1973, more than 180 days after receipt of the notice of sale.

B. That the application of Robert H. Millard, Gerald Stahurski and William F. Melanson (Purchasers) is granted; and that the Audit Division is hereby directed to delete the petitioners from the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 17, 1973.

DATED: Albany, New York

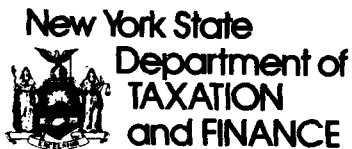
JAN 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



Tax Appeals Bureau

Date 2-23-81

To STC

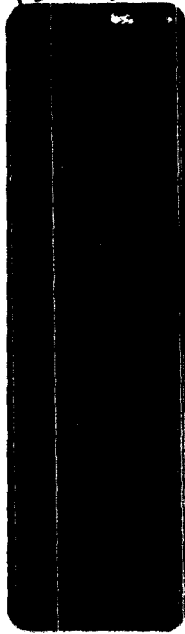
Representatives copy. No better address

M-75.1

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Representatives
copy.

Richard E. Miller
60 Fire Island Ave.
Babylon, NY 11702



REP. COPY

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

January 30, 1981

Robert H. Millard, Gerald Stahurski
and William F. Melanson (purchasers)
3 South Ferry Rd. - Rt. 114
Shelter Island, NY 11964

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
Richard E. Miller
60 Fire Island Ave.
Babylon, NY 11702
Taxing Bureau's Representative

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

January 30, 1981

Robert H. Millard, Gerald Stahurski
and William F. Melanson (purchasers)
3 South Ferry Rd. - Rt. 114
Shelter Island, NY 11964

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
Richard E. Miller
60 Fire Island Ave.
Babylon, NY 11702
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT H. MILLARD,	:	
GERALD STAHURSKI and	:	DECISION
WILLIAM F. MELANSON (Purchasers)	:	
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, 1971 through	:	
January 15, 1973.	:	

Petitioners, Robert H. Millard, Gerald Stahurski and William F. Melanson (Purchasers), 3 South Ferry Road, Route 114, Shelter Island, New York 11964, 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, 1971 through January 15, 1973 (File No. 10064).

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 September 14, 1976; March 14, 1978; July 17, 1978; and continued to completion on May 10, 1979. Petitioners appeared by Richard E. Miller, Esq. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Alexander Weiss and William Fox, Esqs., of counsel).

ISSUES

I. Whether the Notice of Determination and Demand for Payment of Sales and Use Taxes Due was timely issued against petitioners.

FINDINGS OF FACTS

1. In October, 1972, petitioners, Robert H. Millard, Gerald Stahurski and William F. Melanson, contracted with John Coffey, Josephine Coffey and

Dorothy H. Barning for the purchase of the Candelite Inn, a restaurant-bar located at 3 South Ferry Road, Shelter Island, New York.

2. On January 15, 1973, petitioners purchased the Candelite Inn for \$70,075.00.

3. Subsequent to the purchase, on January 31, 1973 petitioners submitted to the Audit Division by first class mail a Notification of Sale, Transfer or Assignment in Bulk.

4. On March 15, 1973, the Audit Division mailed a notice to petitioners regarding a possible claim for New York State and local sales and use taxes.

5. On August 17, 1973, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against John Coffey, Josephine Coffey and Dorothy Barning d/b/a Candelite Inn (Sellers) and petitioners, Robert H. Millard, Gerald Stahurski and William F. Melanson (Purchasers), assessing an estimated tax due of \$8,000.00, plus penalty and interest for the period March 1, 1971 through January 15, 1973.

6. The Audit Division based the aforesaid notice of determination on the fact that no sales tax returns had been filed for the Candelite Inn and on the fact that the sellers failed to respond to a sales tax questionnaire relative to the business activities of the Candelite Inn.

7. Petitioners, by letter of October 10, 1973, timely requested a hearing to review the notice of determination issued August 17, 1973.

CONCLUSIONS OF LAW

A. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued against the purchasers, Robert H. Millard, Gerald Stahurski and William F. Melanson, was not timely. That section 1141(c) of the Tax Law provides:

"...Within one hundred-eighty days of receipt of the notice of the sale...the tax commission shall give notice to the purchaser... of the total amount of any tax or taxes which the state claims to be due from the seller...and whenever the tax commission shall fail to give such notice to the purchaser...such failure will release the purchaser...from any further obligation to withhold any sums of money"

That the Audit Division received notice of the sale on January 31, 1973 and gave notice to the purchasers, Robert H. Millard, Gerald Stahurski and William F. Melanson, of taxes due from the seller on August 17, 1973, more than 180 days after receipt of the notice of sale.

B. That the application of Robert H. Millard, Gerald Stahurski and William F. Melanson (Purchasers) is granted; and that the Audit Division is hereby directed to delete the petitioners from the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 17, 1973.

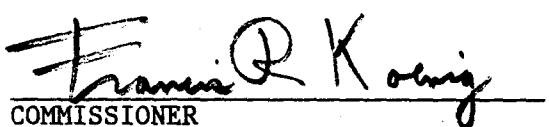
DATED: Albany, New York

JAN 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER