

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Goose & Gherkin Ale  
Imperative Associates, Inc.

:

:

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 12/1/73 - 2/28/77.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon Goose & Gherkin Ale, Imperative Associates, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

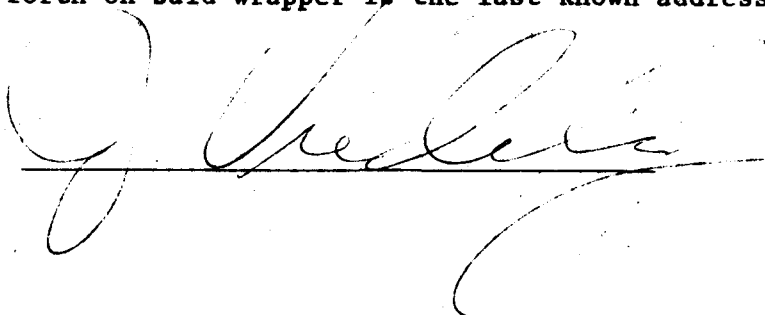
Goose & Gherkin Ale  
Imperative Associates, Inc.  
c/o David J. Eisenberg  
141-14 Northern Blvd.  
Flushing, NY 11354

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  
26th day of March, 1982.





STATE OF NEW YORK  
STATE TAX COMMISSION

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of :  
Goose & Gherkin Ale :  
Imperative Associates, Inc. :

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under Article 28 & 29 of the Tax Law for the :  
Period 12/1/73 - 2/28/77.

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 26th day of March, 1982, he served the within notice of Decision by certified mail upon David J. Eisenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David J. Eisenberg  
Legal Clinic  
141-14 Northern Blvd.  
Flushing, NY 11354

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  
26th day of March, 1982.

*James P. Haglund*

*J. Vredenburg*

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

March 26, 1982

Goose & Gherkin Ale  
Imperative Associates, Inc.  
c/o David J. Eisenberg  
141-14 Northern Blvd.  
Flushing, NY 11354

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
David J. Eisenberg  
Legal Clinic  
141-14 Northern Blvd.  
Flushing, NY 11354  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
GOOSE & GHERKIN ALE : DECISION  
IMPERATIVE ASSOCIATES, INC. :  
for Revision of a Determination or for Refund :  
of Sales and Use Taxes under Articles 28 & 29 :  
of the Tax Law for the Period December 1, 1973 :  
through February 28, 1977. :

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Petitioner, Goose & Gherkin Ale Imperative Associates, Inc., c/o David J. Eisenberg, Esq., 277 Broadway, New York, New York 10007, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the period December 1, 1973 through February 28, 1977 (File No. 19997).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on January 20, 1981, at 10:45 A.M. Petitioner appeared by David Eisenberg, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether additional sales tax asserted against petitioner upon failure to produce records is actually due and owing.

FINDINGS OF FACT

1. On February 1, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Goose & Gherkin Ale Imperative Associates, Inc. for the period December 1, 1973 through November 30, 1976. The Notice was issued upon petitioner's failure to submit information

for an audit and asserted tax due of \$18,292.92, plus penalties and interest of \$6,151.46, for a total of \$24,444.38.

2. The Audit Division used as a basis for its determination the sales and use tax returns filed by petitioner for the period December 1, 1973 through November 30, 1976. Petitioner failed to provide the Audit Division with its sales tax records, therefore the Audit Division estimated the petitioners taxable sales thereby determining additional sales of \$233,562.00 and the additional tax due of \$18,292.92.

3. On February 16, 1977, petitioner sold the business operation, which consisted of a restaurant and bar, for a total sum of \$200,000.00. The sales price of furniture and fixtures sold was \$30,000.00

4. Upon petitioner's protest to the Notice, the Audit Division arranged to conduct an audit. At the scheduled meeting, petitioner produced a "day book" purported to be the summary of petitioner's cash transactions. The Audit Division, however, did not accept the "day book" as adequate records since no source documents were available to support the validity. Petitioner conducted the majority of its business on a cash basis and no records were kept of these cash transactions. The Division therefore made no adjustment to the Notice issued.

5. On July 6, 1977, the Audit Division issued an additional Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period December 1, 1976 through February 28, 1977. Petitioner did not file a sales and use tax return for said quarter; therefore, the Audit Division estimated taxable sales of \$52,804.00 and tax due thereon of \$4,224.32. Petitioner was also assessed sales tax in the amount of \$2,400.00 on the sale of its fixed assets.

6. Petitioner argued that the "day book" presented on audit was sufficient for the verification of its taxable sales. The "day book" is no longer available. Petitioner contended that source documents were given to its previous accountant and were subsequently destroyed by fire.

7. Petitioner offered no evidence to document its contentions or to show that the tax determined due by the Audit Division was incorrect.

8. Petitioner did not show reasonable cause for failure to make its records available for audit prior to the issuance of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated February 1, 1977.

#### CONCLUSIONS OF LAW

A. That section 1135 of the Tax Law states in summary that every person required to collect tax shall keep records of every sale and of the tax payable thereon. Such records shall be available for inspection and examination at any time upon demand and shall be preserved for a period of three years.

B. That petitioner failed to turn over records upon request of the Audit Division. That the Audit Division properly used its authority under the provisions of section 1138(a) of the Tax Law to determine any additional tax due.

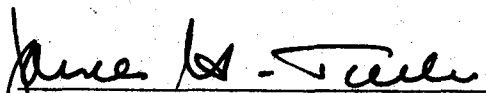
C. That petitioner failed to show that the determination made by the Audit Division was in error.


D. That the petition of Goose & Gherkin Ale Imperative Associates, Inc. is denied and the Notices of Determination and Demand for Payment of Sales and Use Taxes Due issued February 1, 1977 and July 6, 1977 are sustained with full penalties and interest thereon.

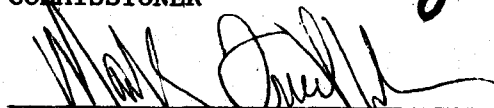
DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK

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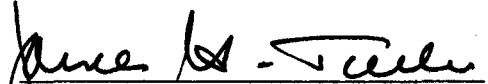
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DATED: Albany, New York

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