

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| Tanny R. Holloway | : | |
| for Redetermination of a Deficiency or a Revision | : | AFFIDAVIT OF MAILING |
| of a Determination or a Refund of Sales & Use Tax | : | |
| under Article 28 & 29 of the Tax Law for the | : | |
| Period 3/1/77-5/31/79. | : | |

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 December, 1982, he served the within notice of Decision by certified mail upon Tanny R. Holloway, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tanny R. Holloway
61 Roosevelt Ave.
Buffalo, NY 14215

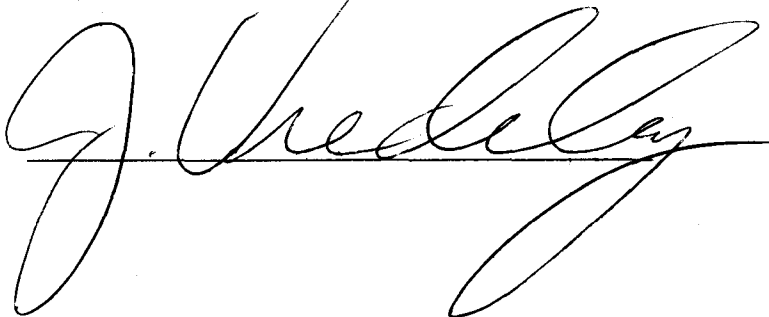
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 December, 1982.

Kathy Pfefferbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tanny R. Holloway :
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 3/1/77-5/31/79. :
_____ :

State of New York
County of Albany

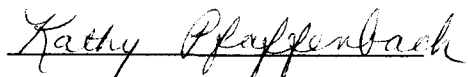
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of December, 1982, he served the within notice of Decision by certified mail upon James I. Myers the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James I. Myers
Fudeman, Renaldo, Myers & Regan, P.C.
69 Delaware Ave., Suite 1110
Buffalo, NY 14202

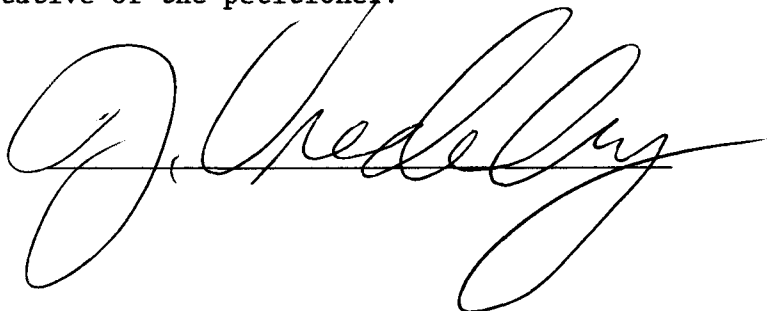
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
29th day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 29, 1982

Tanny R. Holloway
61 Roosevelt Ave.
Buffalo, NY 14215

Dear Mr. Holloway:

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 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
James I. Myers
Fudeman, Renaldo, Myers & Regan, P.C.
69 Delaware Ave., Suite 1110
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| TANNY R. HOLLOWAY | : | 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, 1977 | : | |
| through May 31, 1979. | : | |

Petitioner, Tanny R. Holloway, 61 Roosevelt Avenue, Buffalo, New York 14215, 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, 1977 through May 31, 1979 (File No. 33727).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on May 13, 1982 at 1:15 P.M. Petitioner appeared by James I. Myers, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

I. Whether petitioner is personally liable for sales taxes due from Delevan Liquor Mart, Inc. for the period March 1, 1977 through May 31, 1979.

II. Whether the penalty and interest in excess of the minimum statutory rate should be cancelled.

FINDINGS OF FACT

1. Delevan Liquor Mart, Inc. (hereinafter Delevan) operated a bar located at 1107 Sycamore Street, Buffalo, New York. Delevan filed sales tax returns for

the period March 1, 1977 through May 31, 1979 without remitting the sales taxes due as shown thereon. Said taxes totalled \$8,154.23.

2. On February 27, 1980, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner Tanny R. Holloway covering the period March 1, 1977 through May 31, 1979 for taxes due of \$8,154.23, plus penalty and interest of \$3,572.59, for a total of \$11,726.82. Petitioner's liability was predicated on him being an officer of Delevan.

3. Petitioner was Vice President of Delevan and owned one-third of the stock. Petitioner prepared and signed all but one of the sales tax returns filed for the period at issue. He worked approximately twenty five hours per week on the premises of Delevan.

4. Petitioner argued that the business premises was burglarized and vandalized several times during the period at issue and, consequently, there was no money available to pay the sales taxes.

5. Counsel for the Audit Division conceded that petitioner made payments of \$600.00 towards the taxes asserted on the Notice referred to above; however, the Division applied the payments to a Notice dated October 19, 1978 (#90778992) that was erroneously issued against petitioner.

CONCLUSIONS OF LAW

A. That section 1131(1) of the Tax Law provides:

"Persons required to collect tax' or 'persons required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services;... Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."

B. That section 1133(a) of the Tax Law provides that "...every person required to collect any tax imposed...shall be personally liable for the tax imposed, collected or required to be collected...".

C. That petitioner was a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law. Accordingly, he is personally liable for the taxes due from Delevan Liquor Mart, Inc. pursuant to section 1133(a) of the Tax Law.

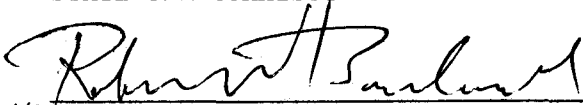
D. That Delevan's failure to pay over the sales taxes was not due to reasonable cause and, therefore, the penalties and interest imposed under section 1145(a) of the Tax Law are sustained.


E. That the petition of Tanny R. Holloway is denied and the Notice and Demand for Payment of Sales and Use Taxes Due issued February 27, 1980 is sustained; however, the Audit Division shall credit petitioner with the payments referred to in Finding of Fact "5".

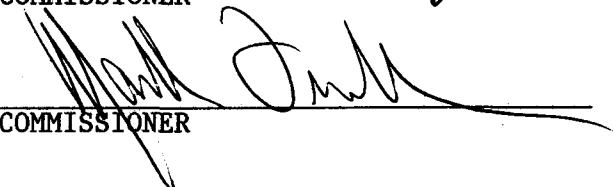
DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER