

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

May 31, 1983

Chumley's Pub, Inc.
and Robert S. Linder and Raymond Lindner
c/o Robert S. Linder
11091 Glenwood Dr.
Coral Springs, FL 33065

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 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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHUMLEY'S PUB, INC.	:	
AND	:	DECISION
ROBERT S. LINDNER	:	
AND	:	
RAYMOND LINDNER	:	
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 September 1,	:	
1973 through May 31, 1977.	:	

Petitioners, Chumley's Pub, Inc., Robert S. Lindner and Raymond Lindner, c/o Robert S. Lindner, 11091 Glenwood Drive, Coral Springs, Florida 33065, 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 September 1, 1973 through May 31, 1977 (File No. 21165).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 25, 1982 at 10:45 A.M. Petitioners appeared by Robert S. Lindner. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined petitioners' sales tax liability.

FINDINGS OF FACT

1. Petitioner Chumley's Pub, Inc. operated a bar located at 583 Main Street, New Rochelle, New York.

2. On October 18, 1977, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (#90,741,735) against petitioners Chumley's Pub, Inc., and Robert S. Lindner and Raymond Lindner, individually and as officers, covering the period September 1, 1973 through May 31, 1977 for taxes due of \$22,600.38, plus penalty and interest of \$7,519.01, for a total of \$30,119.39.

The additional taxes due on said notice consists of the following:

\$16,841.95	sales tax returns not filed or filed without payment
2,856.11	tax due on additional food sales
<u>2,902.32</u>	tax due on overcollections
\$22,600.38	

3. On January 9, 1978, the Audit Division revised the taxes due on notice number 90,741,735 to \$9,136.79 as a result of returns filed and payments made.

The Audit Division conceded that said notice should be further revised to \$5,304.85 based on the verification of additional payments and certain audit adjustments made at a prehearing conference.

4. Notice numbers 91,892,030 and 91,892,032 were issued for \$2,329.50 and \$3,331.09, respectively for unpaid sales tax returns filed for the periods ending May 31, 1976 and November 30, 1976. A payment of \$100.00 was applied towards notice number 91,892,030.

The balance due on the foregoing notices is in addition to notice number 90,741,735.

5. Petitioner Robert S. Lindner appeared at the hearing for the purpose of ascertaining the exact tax liability of Chumley's Pub, Inc. Mr. Lindner did not take exception to the audit results nor show that the liability of Chumley's is other than as indicated above.

6. Petitioners failed to establish that the failure to file returns or pay over the sales taxes at issue was due to reasonable cause.

CONCLUSIONS OF LAW

A. That the Audit Division properly determined the additional taxes due from Chumley's Pub, Inc. in accordance with section 1138(a) of the Tax Law. That the original determination was correctly revised when it was discovered that assessments had already been issued for unpaid sales tax returns filed for periods covered by the audit.

B. That the outstanding tax liability of petitioners is as follows:

<u>Notice Number</u>	<u>Period</u>	<u>Amount</u>
90,741,735	September 1, 1973 through May 31, 1977	\$ 5,304.85
91,892,030	March 1, 1976 through May 31, 1976	2,229.50
91,892,032	September 1, 1976 through November 30, 1976	<u>3,331.09</u>
Total Taxes Due		\$10,865.44*

* Plus applicable penalty and interest.

C. That the petition of Chumley's Pub, Inc., Robert S. Lindner and Raymond Lindner, individually and as officers is denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 31 1983

Rodrigue A. Chiu
PRESIDENT

Francis R. Koeng
COMMISSIONER

Mark J. Smith
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chumley's Pub, Inc. :
and Robert S. Linder and Raymond Lindner : 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 9/1/73-5/31/77. :

State of New York
County of Albany

David Parchuck, 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 31st day of May, 1983, he served the within notice of Decision by certified mail upon Chumley's Pub, Inc., and Robert S. Linder and Raymond Lindner the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chumley's Pub, Inc.
and Robert S. Linder and Raymond Lindner
c/o Robert S. Linder
11091 Glenwood Dr.
Coral Springs, FL 33065

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
31st day of May, 1983.

David Parchuck

Couise A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 481 207 531

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

To <i>See Request</i>	
Street and No. <i>11091 Glenwood Dr.</i>	
P.O., State and ZIP Code <i>Oral Springs Fl.</i>	
Postage	<i>\$33.65</i>
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982