

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

March 18, 1983

Shi-Bor Operating Corp.
2899 Broadway
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 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
Seymour Gros
548 Riverside Dr.
New York, NY 10027
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Shi-Bor Operating Corp. :
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 6/1/75-11/30/78. :
_____:

AFFIDAVIT OF MAILING

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 18th day of March, 1983, he served the within notice of Decision by certified mail upon Shi-Bor Operating Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Shi-Bor Operating Corp.
2899 Broadway
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
18th day of March, 1983.

David Parchuck

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Shi-Bor Operating Corp. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
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Period 6/1/75-11/30/78. :
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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 18th day of March, 1983, he served the within notice of Decision by certified mail upon Seymour Gros the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Gros
548 Riverside Dr.
New York, NY 10027

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
18th day of March, 1983.

David Parchuck

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SHI-BOR OPERATING CORP.	:	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 June 1, 1975	:	
through November 30, 1978.	:	

Petitioner, Shi-Bor Operating Corp., 2899 Broadway, New York, New York 10025, 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 June 1, 1975 through November 30, 1978 (File No. 28774).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 15, 1982, at 1:15 P.M. Petitioner appeared by Seymour Gros. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from petitioner for the period June 1, 1975 through November 30, 1978.

FINDINGS OF FACT

1. Petitioner, Shi-Bor Operating Corp., operated a Yum-Yum ice cream store located at 2899 Broadway, New York, New York.
2. On October 26, 1979, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period June 1, 1975 through November 30,

1978 for taxes due of \$13,289.18, plus minimum statutory interest of \$3,754.88, for a total of \$17,044.06.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period at issue, to December 20, 1979.

4. At the hearing, counsel for the Audit Division conceded that the period ending August 31, 1975 should not have been part of the audit period since said period would have expired within 90 days of the date the audit was started and as such, the taxes determined due for that period should be deleted from the notice.

5. Petitioner did not have complete books and records available for audit. Moreover, petitioner did not maintain a record of taxable sales or sales tax collected. Instead, it estimated that taxable sales were 3 percent of gross sales. Therefore, it was necessary for the Audit Division to resort to a test period to determine petitioner's sales.

The Audit Division analyzed purchase invoices for the period March 1, 1976 through February 28, 1977 and determined the number of containers (i.e. cones, sundae cups, shakes) that would be used in a taxable sale of ice cream. The applicable selling price of the ice cream product was applied to the number of containers purchased in which the product is served to arrive at taxable sales of \$43,435.00. Petitioner reported taxable sales of \$2,389.00 for the same period leaving additional taxable sales of \$41,046.00 or 17.2 times greater than reported taxable sales. This percentage was applied to reported taxable sales of \$9,660.80 to determine additional sales of \$166,186.00 for the audit period and taxes due thereon of \$13,289.18.

6. Petitioner admitted that it erroneously computed the sales taxes reported for the period at issue. Petitioner estimated that 1/3 of gross sales were taxable which results in a tax liability of \$7,684.85.

7. Petitioner argued that the Audit Division's determination is excessive because it opened another location and some of the container purchases were used at the new store.

Petitioner adduced no evidence to show the extent of ice cream sales at another location or if in fact another store existed.

CONCLUSIONS OF LAW

A. That since petitioner maintained incomplete and inadequate books and records, the Audit Division properly determined petitioner's sales tax liability from such information as was available pursuant with section 1138(a) of the Tax Law.

B. That in accordance with Finding of Fact "4", the taxes of \$1,186.08 assessed for the period ending August 31, 1975 are cancelled.

C. That the petition of Shi-Bor Operating Corp. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 26, 1979; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAR 18 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

P 389 758 710
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Shi-Bor operating corp</i>	
Street and No. <i>2899 Broadway</i>	
P.O., State and ZIP Code <i>New York, NY 10025</i>	
Postage	\$
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

P 389 758 711
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Seymour Gros</i>	
Street and No. <i>548 Riverside Dr.</i>	
P.O., State and ZIP Code <i>New York, NY 10027</i>	
Postage	\$
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	
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DATED: Albany, New York

MAR 18 1983

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CERTIFIED

P 389 758 71

MAIL



out of business

Shi-Bor Operating Corp.
2899 Broadway
New York, NY 10026



☒ Moved, left no address
☐ No such number
☐ Moved, not forwardable
☐ Addressee unknown
NEW YORK, N. Y. 10026

