

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Iris Restaurant, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 2/28/78-5/31/80. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 30th day of October, 1985, he served the within notice of Decision by certified mail upon Iris Restaurant, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Iris Restaurant, Inc.
82 Bank St.
New York, NY 10014

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 October, 1985.

David Parchuck

James P. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Iris Restaurant, Inc. :
for Redetermination of a Deficiency or Revision :
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under Article 28 & 29 of the Tax Law for the :
Period 2/28/78-5/31/80. :
:

AFFIDAVIT OF MAILING

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 30th day of October, 1985, he served the within notice of Decision by certified mail upon Jack Ullman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Ullman
Ullman, Weisberg & Co.
117 Cuttermill Rd.
Great Neck, NY 11021

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 October, 1985.

David Parchuck

Emmie W. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 30, 1985

Iris Restaurant, Inc.
82 Bank St.
New York, NY 10014

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Jack Ullman
Ullman, Weisberg & Co.
117 Cuttermill Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
IRIS RESTAURANT, INC. 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 February 28, 1978
through May 31, 1980. :

Petitioner, Iris Restaurant, Inc., 82 Bank Street, New York, New York 10014, 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 February 28, 1978 through May 31, 1980 (File No. 42096).

A formal 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 April 4, 1985 at 2:20 P.M., with all briefs to be submitted by May 30, 1985. Petitioner appeared by Ullman, Weisberg & Co. (Jack Ullman, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined the sales and use tax liability of Iris Restaurant, Inc. for the periods in issue.

FINDINGS OF FACT

1. On September 20, 1982, the Audit Division, as a result of an audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Iris Restaurant, Inc. ("Iris") for the period February 28, 1978 through May 31, 1980. The notice assessed a tax due of \$20,608.88 plus penalty of \$5,152.22 and interest of \$8,365.07 for a total of \$34,126.17.

On the same date, a Notice for an identical amount was issued against William Gottlieb as officer of Iris Restaurant, Inc.

2. The petitioner filed sales and use tax returns for the period December 1, 1978 through February 28, 1979; and March 1, 1979, through May 31, 1979. No additional taxes were assessed for these periods. The petitioner also filed a sales tax return for the period June 1, 1979, through August 31, 1979. The Audit Division assessed an additional tax due of \$2,477.84 for this period. No other tax returns were filed by petitioner.

3. Iris had ceased doing business at the time of the audit. Books and records were requested from petitioner, but those made available were incomplete and could not be used as a basis for the audit. No purchase records, state or federal tax returns, guest checks, cash register tapes or cash disbursement journals were submitted. Subsequent to the audit, the petitioner submitted records of cash receipts for May, 1978 and January, February and October of 1979. But these were also incomplete.

4. Since the Audit Division was unable to obtain records upon which an audit of Iris could be performed, it was concluded that resort to external indices was necessary.

5. At the time of the audit, the Audit Division was conducting an audit of another restaurant, Inca Bar and Restaurant ("Inca"), owned by William Gottlieb, located in the same area of New York City and similar in operation to Iris. Since both restaurants were so similar, it was concluded that Iris's tax liability could be most accurately calculated by using figures taken from the second restaurant. Inca's gross purchases for the 1979 calendar year, as reported on its Federal Income Tax return were \$37,773.00. The Audit Division used this figure as a basis to estimate Iris's annual purchases and applied a

300 percent markup to arrive at a tax liability of \$3,021.84 per quarter for Iris. The 300 percent markup was based on the Audit Division's past experience with similar restaurants in the same area.

6. The petitioner argued that the taxes determined to be due were excessive because they were based on estimated figures and a markup higher than that employed by Iris. No testimony or documentary evidence was submitted in support of the petitioner's contentions.

CONCLUSIONS OF LAW

A. Section 1135(a) of the Tax Law states:

Every person required to collect tax shall keep records of every sale...and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the Tax Commission may by regulation require. Such records shall include a true copy of each sales slip, invoice, receipt [or] statement.

Petitioner Iris failed to maintain books and records as required by the Tax Law. Consequently, the Audit Division properly estimated the taxes due on the basis of external indices pursuant to section 1138(a) of the Tax Law.

B. That the method of estimating taxes employed by the Audit Division was reasonable under the circumstances, and Iris failed to sustain its burden of demonstrating by clear and convincing evidence that the tax assessed was erroneous (Matter of Surface Line Operators Fraternal Organization, Inc. v. State Tax Commission, 85 A.D.2d 858).

C. That the petition of Iris Restaurant, Inc. is in all respects denied.

DATED: Albany, New York

OCT 30 1985

STATE TAX COMMISSION

Rodwick W. Clu
PRESIDENT

Francis R. Koehn
COMMISSIONER

Mark J. [Signature]
COMMISSIONER

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

P 153 387 606

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

Sent to	<i>Irish Restaurant</i>
Street and No.	<i>82 Bank St.</i>
P.O., State and ZIP Code	<i>New York, NY 10014</i>
Postage	<i>\$ 1.10</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

P 153 387 605

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
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(See Reverse)

★ U.S.G.P.O. 1984-446-014

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Street and No.	<i>82 Bank St.</i>
P.O., State and ZIP Code	<i>New York, NY 10014</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	

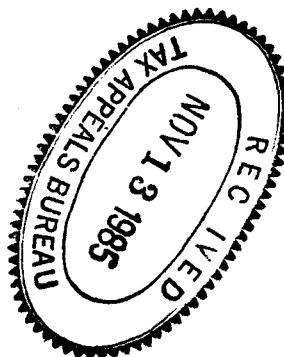
PS Form 3800, Feb. 1982

W

☒ Moved, Left no address
☐ Moved, not for delivery
☐ No such number
☐ Address not in directory
☐ Address not in city directory
☐ Address not in telephone directory
☐ Address not in city directory
☐ Address not in telephone directory
☐ Address not in city directory
☐ Address not in telephone directory

Irish Restaurant, Inc.
82 Bank St.
New York, NY 10014

CERTIFIED
P 153 387 605
MAIL



TA 26 (9-79)

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

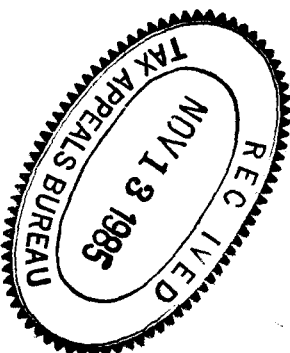
☒ Moved, left no address
☐ No such address
☐ Moved, not at old address
☐ Address not known
NEW YORK, N. Y. 10014
10014
WNY

CERTIFIED

P 153 367 605

MAIL

Iris Restaurant, Inc.
82 Bank St.
New York, NY 10014



REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 11/13/85
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition For - Dec - 10/30/85
Name Iris Restaurant, Inc.	
Address 82 Bank St. New York, N.Y. 10014	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	Moved Left No Address

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

October 30, 1985

Iris Restaurant, Inc.
82 Bank St.
New York, NY 10014

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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
Jack Ullman
Ullman, Weisberg & Co.
117 Cuttermill Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

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C. That the petition of Iris Restaurant, Inc. is in all respects denied.

DATED: Albany, New York

OCT 30 1985

STATE TAX COMMISSION

Richard A. Clev
PRESIDENT

Francis Q. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER