

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of  
Cordeiro's Old Ridge Inn, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax  
under Article(s) 28 & 29 of the Tax Law for the :  
Period 9/1/80-9/28/83.  
:

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 12th day of November, 1986, he/she served the within notice of Decision by certified mail upon Cordeiro's Old Ridge Inn, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cordeiro's Old Ridge Inn, Inc.  
2454 Ridge Road East  
Ontario, NY 14519

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  
12th day of November, 1986.

David Parchuck  
Authorized to administer oaths  
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of

Cordeiro's Old Ridge Inn, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax  
under Article(s) 28 & 29 of the Tax Law for the :  
Period 9/1/80-9/28/83.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 12th day of November, 1986, he served the within notice of Decision by certified mail upon Michael L. Villeneuve, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael L. Villeneuve  
1945 East Ridge Rd.  
Rochester, NY 14622

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  
12th day of November, 1986.

David Parchuck  
Authorized to administer oaths  
pursuant to Tax Law section 174

Janet M. Snay

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

November 12, 1986

Cordeiro's Old Ridge Inn, Inc.  
2454 Ridge Road East  
Ontario, NY 14519

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Michael L. Villeneuve  
1945 East Ridge Rd.  
Rochester, NY 14622

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CORDEIRO'S OLD RIDGE INN, 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 September 1,	:	
1980 through September 28, 1983.	:	

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Petitioner, Cordeiro's Old Ridge Inn, Inc., 2454 Ridge Road East, Ontario, New York 14519, 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, 1980 through September 28, 1983 (File No. 50712).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on January 30, 1986 at 10:45 A.M., with additional evidence to be submitted by February 13, 1986. Petitioner appeared by Michael Villeneuve, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

#### ISSUE

Whether the Audit Division's assertion of additional sales tax due from petitioner, which assertion was premised upon a bulk sale transfer of certain baseball field lights, was proper.

#### FINDINGS OF FACT

1. On December 19, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner, Cordeiro's

Old Ridge Inn, Inc., for the period September 1, 1980 through September 28, 1983 asserting total sales tax due of \$15,549.97, plus penalty and interest. The notice indicated that bulk sales tax of \$4,550.00 was included in the total sales tax asserted due from petitioner.

2. On October 9, 1984, the Audit Division issued to petitioner a Notice of Assessment Review which adjusted the tax asserted due in the aforementioned Notice of Determination and asserted \$4,550.00 in tax due from petitioner, plus penalty and interest.

3. The adjusted tax asserted due by the Audit Division was premised upon the Audit Division's contention that petitioner had sold in bulk certain furniture and fixtures used in petitioner's business to Jerry's Ontario Old Ridge Inn, Inc. The Audit Division contended that the sales price of the assets sold was \$65,000.00, and calculated the bulk sales tax asserted due accordingly. The \$65,000.00 sales price for the furniture and fixtures sold was determined from a Notification of Sale, Transfer or Assignment in Bulk, dated September 14, 1983, which was filed with respect to the aforementioned bulk sales transaction by the purchaser in the transaction and which listed \$65,000.00 as the sales price of "Furniture, Fixtures, Etc."

4. On October 15, 1984, the bulk sale purchaser, Jerry's Ontario Old Ridge Inn, Inc., remitted \$3,500.00 in payment of the tax asserted due by the Audit Division. Said purchaser also submitted an amended Notification of Sale, Transfer or Assignment in Bulk which listed \$50,000.00 as the sales price of "Furniture, Fixtures, Etc.", in the bulk sale at issue. Petitioner contended that the amended notification correctly listed the sales price of the assets in question and that the original notification had incorrectly listed \$65,000.00 as the sales price of said assets.

5. Both the September 14, 1983 notification and the amended notification listed petitioner as the seller in the bulk sale. Both notifications listed September 28, 1983 as the scheduled date of sale.

6. As a result of the aforementioned payment, the amount of tax which remains at issue herein is \$1,050.00. The sole asset upon which the Audit Division maintains that bulk sales tax has not been paid is a set of baseball field lights which were transferred to the purchaser in the bulk sale. Petitioner contended that these lights were included in the \$50,000.00 selling price of furniture and fixtures as listed on the amended sale notification and upon which sales tax had been paid.

7. With respect to the bulk sale transaction, an Agreement of Sale was entered into on July 8, 1983 by and between Jerry's Ontario Old Ridge Inn, Inc., as buyer, and petitioner and Cordeiro's Field, Inc., as sellers. The agreement provided for a total purchase price of \$210,000.00 for the sale of approximately 12.36 acres of land improved by a single family dwelling, a tavern-restaurant-partyhouse, a trailer, a baseball field, lighting for the baseball field, and furniture, equipment and furnishings.

8. On July 25, 1983, the aforementioned parties executed an Addendum to Agreement of Sale which allocated the total purchase price to the land, buildings and other property involved in the sale. Insofar as said allocation is relevant herein, the addendum allocated \$50,000.00 of the purchase price to "Equipment and furnishings" and \$15,000.00 to "Land improvements (lighting)".

9. The Federal income tax return of Cordeiro's Field, Inc. for its fiscal year ended July 31, 1982 listed "ballfield lights" as a depreciable asset on its depreciation schedule. Said schedule further indicated that the lights were acquired in August, 1979 at a cost of \$6,000.00 and that Cordeiro's Field,

Inc. claimed \$600.00 of depreciation on the lights for its fiscal year ended July 31, 1982.

10. At the time of the bulk sale, George Cordeiro owned 100 percent of the common stock of both petitioner and Cordeiro's Field, Inc. Mr. Cordeiro was also president of each corporation.

11. At the time of the sale, the baseball field lights referred to herein were owned by Cordeiro's Field, Inc. The lights were sold in the bulk sale by Cordeiro's Field, Inc., to Jerry's Ontario Old Ridge Inn, Inc. Although it owned the lights at the time of sale, Cordeiro's Field, Inc. did not file a Notification of Sale, Transfer or Assignment in Bulk with respect to the sale of such lights; nor did the purchaser file any such notification with respect to the sale.

12. At hearing, the Audit Division conceded that petitioner had shown reasonable cause for abatement of the penalty asserted by the Audit Division with respect to the amount of the tax at issue herein.

#### CONCLUSIONS OF LAW

A. That inasmuch as petitioner did not own the baseball field lights in question at the time of sale, which lights are the only asset which remains at issue herein, petitioner did not sell, transfer or assign the lights within the meaning of section 1141(c) of the Tax Law. The Audit Division therefore improperly asserted tax due from petitioner with respect to the transfer of this asset.

B. That the petition of Cordeiro's Old Ridge Inn, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 19, 1983, as revised, is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 12 1986

Rodriguez W Chen  
PRESIDENT

Francis R Koenig  
COMMISSIONER

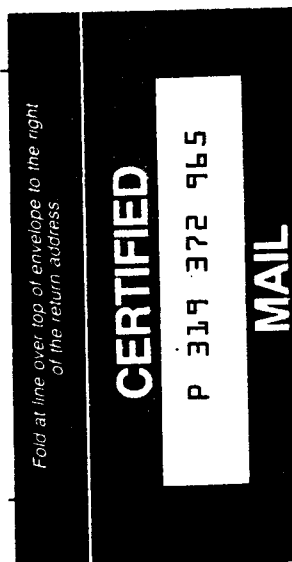
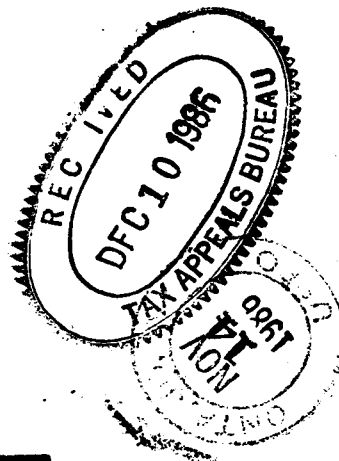
Mark J. Jurek  
COMMISSIONER

P 319 372 966  
**RECEIPT FOR CERTIFIED MAIL**  
 NO INSURANCE COVERAGE PROVIDED  
 NOT FOR INTERNATIONAL MAIL  
 (See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to	Michael L. Villeneuve
Street and No	1945 East Ridge Rd
P.O. State and ZIP Code	Rochester, N.Y. 14622
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	



Gordetro's Old Ridge Inn, Inc.  
 2454 Ridge Road East  
 Ontario, NY 14519

*undelivered*

P 319 372 965  
**RECEIPT FOR CERTIFIED MAIL**  
 NO INSURANCE COVERAGE PROVIDED  
 NOT FOR INTERNATIONAL MAIL  
 (See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to	Gordetro's Old Ridge Inn Inc
Street and No	2454 Ridge Road East
P.O. State and ZIP Code	Ontario N.Y. 14519
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	

TA-26 (7/85)  
 STATE OF NEW YORK  
 State Tax Commission  
 TAX APPEALS BUREAU  
 W. A. Harriman Campus  
 ALBANY, N.Y. 12227

Claim Check No. 153883

☐ Hold

Date

11-14  
 1ST Notice

11-19  
 2ND Notice

11-29  
 Return

Detached from PS Form 3849-A, Oct. 1985

RECEIVED  
 NOV 10 1986  
 TAX APPEALS BUREAU  
 FIVE STAR SERVICE  
 Fwd. Order Expired

TA-26 (7/85)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
W. A. Harriman Campus  
ALBANY, N.Y. 12227

Claime Check  
**153883**

☐ Fold

Date

11.14  
1ST POST

11.19  
2ND POST

11.29  
RETURN

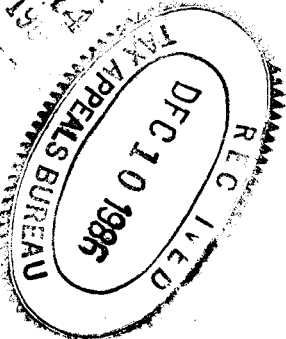
Detached from  
PS Form 3800-4  
Oct. 1984

**CERTIFIED**

P 319 372 965

**MAIL**

~~Gordelro's Old Ridge Inn, Inc.  
2454 Ridge Road East  
Ontario, NY 14519~~



*W. A. Harriman*



REQUEST FOR BETTER ADDRESS

ST

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  12/12/86
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec - 11/12/86
Name Cordeiro's Old Ridge Inn, Inc.	
Address 2454 Ridge Road East Ontario, N.Y. 14519	

## Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Unclaimed

Searched by  DB	Section	Date of Search  12/12/86
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

November 12, 1986

Cordeiro's Old Ridge Inn, Inc.  
2454 Ridge Road East  
Ontario, NY 14519

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Michael L. Villeneuve  
1945 East Ridge Rd.  
Rochester, NY 14622

STATE OF NEW YORK

STATE TAX COMMISSION

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6. As a result of the aforementioned payment, the amount of tax which remains at issue herein is \$1,050.00. The sole asset upon which the Audit Division maintains that bulk sales tax has not been paid is a set of baseball field lights which were transferred to the purchaser in the bulk sale. Petitioner contended that these lights were included in the \$50,000.00 selling price of furniture and fixtures as listed on the amended sale notification and upon which sales tax had been paid.

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Inc. claimed \$600.00 of depreciation on the lights for its fiscal year ended July 31, 1982.

10. At the time of the bulk sale, George Cordeiro owned 100 percent of the common stock of both petitioner and Cordeiro's Field, Inc. Mr. Cordeiro was also president of each corporation.

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12. At hearing, the Audit Division conceded that petitioner had shown reasonable cause for abatement of the penalty asserted by the Audit Division with respect to the amount of the tax at issue herein.

#### CONCLUSIONS OF LAW

A. That inasmuch as petitioner did not own the baseball field lights in question at the time of sale, which lights are the only asset which remains at issue herein, petitioner did not sell, transfer or assign the lights within the meaning of section 1141(c) of the Tax Law. The Audit Division therefore improperly asserted tax due from petitioner with respect to the transfer of this asset.

B. That the petition of Cordeiro's Old Ridge Inn, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 19, 1983, as revised, is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 12 1986

Rodriguez W. C. L.  
PRESIDENT

Francis D. Koenig  
COMMISSIONER

[Signature]  
COMMISSIONER