

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of

Reidy's Cafe, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales and Use Tax  
under Article(s) 28 & 29 of the Tax Law :  
for the Period 12/01/80 - 11/30/83.

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State of New York :

ss.:

County of Albany :

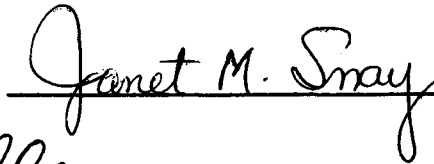
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 12th day of June, 1986, he/she served the within notice of Decision by certified mail upon Reidy's Cafe, Inc. the petitioner in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

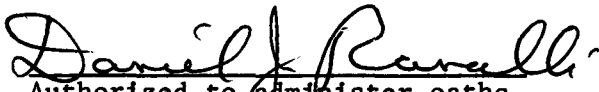
Reidy's Cafe, Inc.  
22 E. 54 Street  
New York, NY 10022

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 June, 1986.

  
\_\_\_\_\_

  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of

Reidy's Cafe, Inc. :

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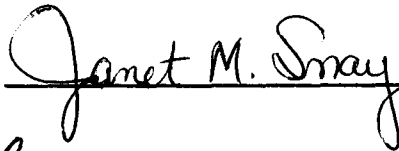
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 12th day of June, 1986, he served the within notice of Decision by certified mail upon Joseph E. Porcelli, the representative of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

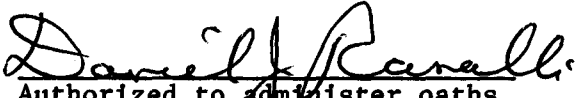
Joseph E. Porcelli  
Maloney & Porcelli  
225 Broadway  
New York, NY 10007

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 June, 1986.

  
\_\_\_\_\_

  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

June 12, 1986

Reidy's Cafe, Inc.  
22 E. 54 Street  
New York, NY 10022

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:  
Joseph E. Porcelli  
Maloney & Porcelli  
225 Broadway  
New York, NY 10007

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
REIDY'S CAFE, 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 December 1,	:	
1980 through November 30, 1983.	:	

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Petitioner, Reidy's Cafe, Inc., 22 East 54th Street, New York, New York 10022, 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 December 1, 1980 through November 30, 1983 (File No. 59422).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1985 at 9:15 A.M., with all briefs to be submitted by February 5, 1986. Petitioner appeared by Maloney & Porcelli, Esqs. (William P. Maloney, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner filed a petition for a hearing with the State Tax Commission within 90 days of the issuance of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due.

FINDINGS OF FACT

1. On September 20, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due ("Notice") against petitioner, Reidy's Cafe, Inc. Said Notice, which encompassed the period

December 1, 1980 through November 30, 1983, determined additional sales and use tax due of \$49,488.00, plus penalty of \$10,999.57 and interest of \$14,132.37, for a total amount due of \$74,619.94.

2. In its Answer to petitioner's Perfected Petition the Audit Division "[a]ffirmatively alleges on information and belief that the petitioner failed to timely file an application for a hearing." There is nothing in the record to indicate the date on which the Audit Division asserts petitioner's late filed petition was received.

3. The petition submitted in evidence by the Audit Division was signed by petitioner's president on November 27, 1984. The mailing envelope was not attached to said petition nor was it submitted in evidence. The petition submitted in evidence contained no indated stamps or any other evidence to indicate the date of its receipt.

4. The petition filed by Reidy's Cafe, Inc. was prepared prior to November 27, 1984 and said petition was placed, on November 27, 1984, in an official depository of the United States Postal Service. The petition was addressed to the Tax Appeals Bureau of the State Tax Commission and was enclosed in a postpaid envelope.

#### CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in pertinent part, as follows:

"...Notice of such determination shall be given to the person liable for the collection or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the tax commission for a hearing..."

B. That the evidence in the instant matter demonstrates that the petition for redetermination was filed on or about November 27, 1984. There is nothing in the record to show that the petition was mailed on a date other than November 27, 1984 nor is there any evidence to show that the petition was received beyond the statutory 90 day period for the filing of a petition. Since the Notice of Determination and Demand for Payment of Sales and Use Taxes Due was dated September 20, 1984, the petition filing date of November 27, 1984 falls within the 90 day period. See Matter of the Petition of Carolyn Compton, State Tax Comm., February 18, 1986.

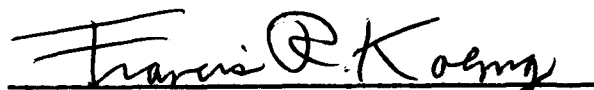
C. That the petition of Reidy's Cafe, Inc. is found to have been timely filed and the matter is to be returned to the Tax Appeals Bureau for further proceedings not inconsistent herewith.

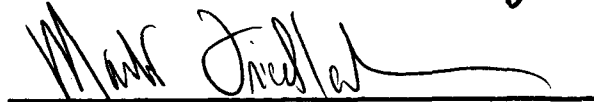
DATED: Albany, New York

STATE TAX COMMISSION

JUN 12 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 319 372 732

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, June 1985

★ U.S.G.P.O. 1985-480-794

Sent to <b>Joseph F. Porcelli</b>	
Street and No. <b>Maloney + Porcelli</b>	
<b>225 Broadway</b>	
P.O., State and ZIP Code <b>New York, N.Y. 10007</b>	
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	

P 319 372 731

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, June 1985

★ U.S.G.P.O. 1985-480-794

Sent to <b>Reidy's Cafe, Inc.</b>	
Street and No. <b>22 E. 54 Street</b>	
P.O., State and ZIP Code <b>New York, N.Y. 10022</b>	
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	