

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MANLEY'S LIQUOR STORE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (x) 23 of the :
Tax Law for the ~~xxxxxx~~ Period (x) :
Ending July 28, 1969.

State of New York
County of Albany

John Huhn , 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 15th day of September , 1977 , ~~he~~ served the within
Notice of Decision by (certified) mail upon Manley's Liquor Store

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

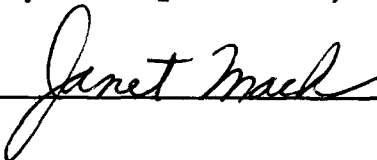
Manley's Liquor Store
c/o James J. Maguire
4124 39th Place
Long Island City, New York 11104

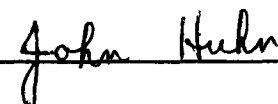
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

15th day of September , 19 77





STATE OF NEW YORK
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AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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of Unincorporated Business :
Taxes under Article (X) 23 of the :
Tax Law for the ~~Year 1968~~ Period (X) :
Ending July 28, 1969.

State of New York
County of Albany

John Huhn , 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 15th day of September , 1977 , he served the within
Notice of Decision by (certified) mail upon A. Louis Skolnik

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

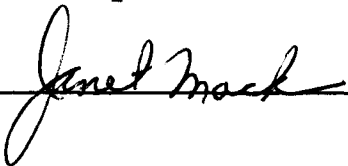
as follows: A. Louis Skolnik, CPA
1386 East 31st Street
Brooklyn, New York 11210

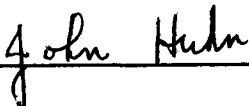
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last known address of the (representative of the) petitioner.

Sworn to before me this

15th day of September , 1977.







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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

September 15, 1977

**Manley's Liquor Store
c/o James J. Maguire
4124 39th Place
Long Island City, New York 11104**

Dear Mr. Maguire:

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) **722** 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on June 10, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by James J. Maguire and by A. Louis Skolnik, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

Whether the sale of goodwill together with the nonseverable covenant not to compete for \$30,000.00 resulted in a gain subject to the unincorporated business tax?

FINDINGS OF FACT

1. Manley's Liquor Store filed a "final" 1969 New York State partnership return for the period January 1, 1969 to July 28, 1969. As of July 28, 1969, the partnership entity was dissolved and its assets sold.

2. On October 28, 1974, the Income Tax Bureau issued a Notice of Deficiency, holding the sale of goodwill for \$30,000.00 as taxable income for unincorporated business tax purposes. The issuance of the Notice of Deficiency at that late date was authorized by section 722 of Article 23 and section 683(d) of Article 22 of the Tax Law.

3. Manley's Liquor Store is a partnership which consists of three partners; Adeline P. Manley, James J. Maguire and Thomas W. Pierce.

4. Adeline P. Manley inherited Manley's Liquor Store under the will of her deceased husband, John J. Manley. At that time, goodwill was appraised at a fair market-value of \$50,000.00, in addition to inventory and other assets. Accordingly, the goodwill was valued at \$50,000.00 for Federal estate tax purposes.

5. On November 30, 1955, a partnership was formed, whereby the capital of the business was designated as 40% to Adeline P. Manley, 40% to James J. Maguire and 20% to Thomas W. Pierce.

6. On April 21, 1969, the retail liquor store business known as Manley's Liquor Store was sold for \$30,000.00, plus the cost of the current inventory at the time of closing.

7. The sales contract contained a covenant not to compete for a period of two years.

8. The partners retired upon the sale of the retail liquor store. Their intent to retire was known to the purchaser, Kenneth Maguire.

CONCLUSIONS OF LAW

A. That the cost basis of goodwill of Manley's Liquor Store for purposes of determining the gain or loss of the partnership for unincorporated business tax purposes was the value established for Federal estate tax purposes of \$50,000.00.


B. That the sale of goodwill together with the nonseverable covenant not to compete resulted in a loss of \$20,000.00 reportable on the 1969 New York State income and unincorporated business tax partnership return.

C. That the petition of Manley's Liquor Store is granted and that the Income Tax Bureau is directed to refund the sum of \$767.77 together with such interest as may be lawfully owing.

DATED: Albany, New York
September 1, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER