

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louis Lazarus & Sol Lazarus :
d/b/a Concourse Wines & Liquors :
: for Redetermination of a Deficiency or for Refund
of Unincorporated Business Tax under Article 23 of :
the Tax Law for the Years 1972 & 1973. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Sol Lazarus :
: for Redetermination of a Deficiency or for Refund
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1972 and 1973. :

State of New York
County of Albany

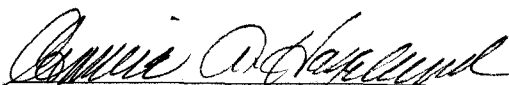
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Louis Lazarus the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

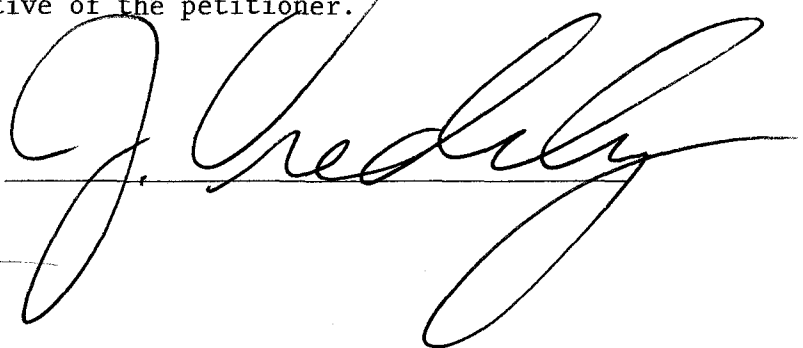
Louis Lazarus
2915 N.W. 60th Ave.
Sunrise, FL 33313

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
14th day of December, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louis Lazarus & Sol Lazarus :
d/b/a Concourse Wines & Liquors :
:
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AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Sol Lazarus :
:
for Redetermination of a Deficiency or for Refund :
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State of New York
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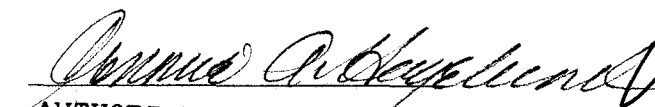
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Philip Wagner the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

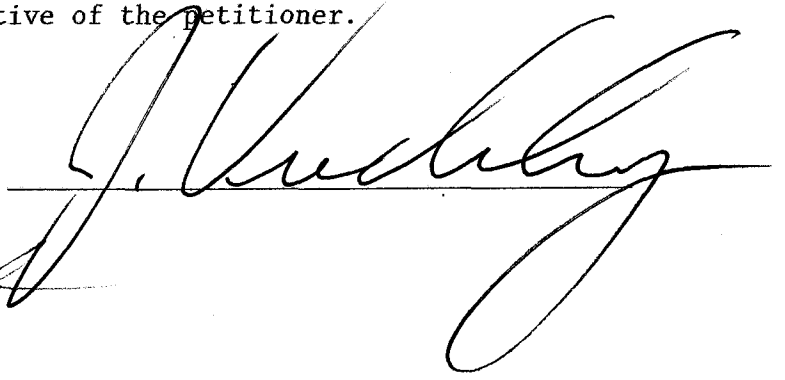
Philip Wagner
28 Primrose Lane
New City, NY 10956

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
14th day of December, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Louis Lazarus & Sol Lazarus :
d/b/a Concourse Wines & Liquors :
:
for Redetermination of a Deficiency or for Refund :
of Unincorporated Business Tax under Article 23 of :
the Tax Law for the Years 1972 & 1973. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Sol Lazarus :
:
for Redetermination of a Deficiency or for Refund :
of Personal Income Tax under Article 22 of the Tax :
Law for the Years 1972 and 1973. :

State of New York
County of Albany


Jay Vredenburg, 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 14th day of December, 1982, he served the within notice of Decision by certified mail upon Louis Lazarus & Sol Lazarus, d/b/a Concourse Wines & Liquors and Sol Lazarus, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

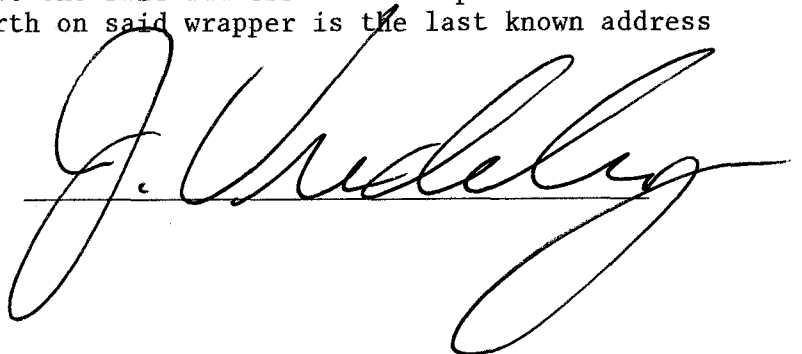
Louis Lazarus & Sol Lazarus
d/b/a Concourse Wines & Liquors
2904 N.W. 60th Terrace, Apt. 439
Sunrise, FL 33313

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
14th day of December, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 14, 1982

Louis Lazarus & Sol Lazarus
d/b/a Concourse Wines & Liquors
2904 N.W. 60th Terrace, Apt. 439
Sunrise, FL 33313

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) 690 & 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:

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
Philip Wagner
28 Primrose Lane
New City, NY 10956
Taxing Bureau's Representative

and

Louis Lazarus
2915 N.W. 60th Ave.
Sunrise, FL 33313

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
LOUIS LAZARUS and SOL LAZARUS
D/B/A CONCOURSE WINES & LIQUORS
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1972
and 1973.

DECISION

In the Matter of the Petition
of
SOL LAZARUS
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1972 and 1973.

Petitioners, Louis Lazarus and Sol Lazarus, d/b/a Concourse Wines & Liquors, 2904 N.W. 60th Terrace, Apt 439, Sunrise, Florida 33313, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1972 and 1973 (File No. 24151).

Petitioner, Sol Lazarus, 2904 N.W. 60th Terrace, Apt. 439, Sunrise, Florida 33313, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1972 and 1973 (File No. 19449).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 7, 1981 at 10:45 A.M. Petitioners appeared by Philip Wagner.

The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the deficiencies issued as the result of a field audit were proper.

FINDINGS OF FACT

1. The Audit Division conducted a field audit of the partnership, Concourse Wines & Liquors, for the years 1972 and 1973 wherein an indirect method of computing income was utilized since adequate books and records were unavailable.

2. On February 4, 1977 the Audit Division issued a Statement of Audit Changes to Louis Lazarus and Sol Lazarus, d/b/a Concourse Wines & Liquors (hereinafter the partnership) wherein, since purchase invoices were unavailable for audit, gross profit was determined through use of a gross profit percentage of twenty five (25) percent. Use of said method yielded adjustments of \$12,848.00 and \$14,722.00 for the years 1972 and 1973 respectively, which were reported as adjustments "to correct cost of goods sold". Accordingly, a Notice of Deficiency was issued against the partnership on April 11, 1977 asserting additional unincorporated business tax of \$1,224.11, plus interest of \$317.63, for a total due of \$1,541.74. Such notice was timely issued since on January 13, 1976 the partnership filed a consent fixing the period of limitation upon assessment of unincorporated business tax to April 15, 1977.

3. On February 4, 1977 the Audit Division also issued a Statement of Audit Changes to Sol Lazarus (hereinafter petitioner) wherein half the partnership adjustment was held attributable to him personally for each of the years at issue. Accordingly, a Notice of Deficiency was issued against petitioner on April 11, 1977 asserting additional personal income tax of \$913.27, plus

interest of \$239.92, for a total due of \$1,153.19. Such notice was timely issued since on January 13, 1976 petitioner filed a consent fixing the period of limitation upon assessment of personal income tax to April 15, 1977.

4. The gross profit percentages reported by the partnership for 1972 and 1973 were computed to be 18.8 percent and 11.16 percent respectively.

5. The Audit Division's use of a gross profit percentage of 25 percent for each of the years at issue was determined based on information supplied by the New York State Sales Tax Bureau and the State Liquor Authority. Such information indicated that the average gross profit percentages usual to a similar type business in the same general area where the partnership premises was located was 18 to 20 percent for liquor and 50 percent for wine. The gross profit percentage of 25 percent used for the audit was felt to be conservative since the locality where the partnership was situated was "heavily into wine sales".

6. The partnership contended that the gross profit percentage used by the Audit Division was unreasonably high. No evidence, documentary or otherwise, was offered to support such contention.

7. Use of the gross profit percentage method of determining income where adequate books and records are not available is an accepted audit practice.

CONCLUSIONS OF LAW

A. That the deficiencies issued by the Audit Division as the result of the field audit conducted of Louis Lazarus and Sol Lazarus, d/b/a Concourse Wines & Liquors, were proper, since the petitioners failed to sustain their burden of proof requires pursuant to section 689(e) of the Tax Law to show that the gross profit percentages reported by the partnership were correct.

B. That the petition of Louis Lazarus and Sol Lazarus, d/b/a Concourse Wines & Liquors is denied and the Notice of Deficiency issued April 11, 1977, relative to the partnership, is sustained together with such additional interest as may be lawfully owing.

C. That the petition of Sol Lazarus is denied and the Notice of Deficiency issued April 11, 1977, relative to same, is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER