

# AMOA - NY

AMUSEMENT AND MUSIC OWNERS ASSOCIATION OF NEW YORK, INC.

A not-for profit corporation dedicated to the betterment of the amusement industry.

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## **REMARKS OF CARY DAVID KESSLER, ESQ.**

**Before the Council of the City of New York Finance Committee**

**Wednesday, July 29, 2009 – City Hall @ 11 a.m.**

Chairman Weprin, Honorable Members of the Finance Committee, it is a privilege and an honor to address this Committee in connection with proposed Legislation to save the City of New York time and money. It was twelve (12) years ago that I last appeared before the Finance Committee in connection with repealing the tax on amusement machines which actually cost the City of New York money, created an underground business of amusement machines that went untaxed and resulted in wasted government resources.

It was thanks to your predecessor, the Hon. Herbert Berman that during his Chairmanship of the Finance Committee and that legislation was introduced and a hearing held in 1997 which led to the repeal of the tax known as COAD (Coin Operated Amusement Device). I would be remiss, if I also did not mention that the late Howard Lasher, Council Member from Brooklyn, was the first Member to recognize the plight facing the amusement machine industry regarding this tax. A brief history is in order to put into prospective where we were twelve (12) years ago. Throughout the 1990s, the amusement machine industry saw a drastic reduction in its business due to the increasing popularity of electronic games at home and on computers. The city tax on amusement machines rose to \$175. in the mistaken belief that a tax increase would generate significant funds for the City Treasury. The facts, as revealed from the City budget office, concluded that the revenues were declining as the costs of administering the tax rose. In addition, as A.M.O.A.-N.Y. proved, the proliferation of unlicensed businesses who flew below the "tax radar" reached epidemic proportion. Legitimate businesses in the amusement machine industry could not compete. Worse still, no business would risk placing an amusement machine at a city location, pay for the tax and hope that the location would bring in enough traffic to justify the cost of the machine (often costing \$2,000. to \$5,000.) and maintenance and repairs costs.

Introductory Bill 974 of 1997 by Council Member Berman was passed by the New

York City Council. It eliminated the tax on coin operated amusement devices. Mayor Giuliani in a written statement when he repealed the tax on June 23, 1997, said: "The higher tax level has been criticized by affected small business owners as burdensome, especially in regard to the seasonal use of many devices, such as amusement devices used outdoors during summer months."

As an aside, I attended that Bill signing ceremony and also witnessed the Mayor repealing the infamous Vault Charge Tax. As an attorney in private practice for over twenty (20) years, and one who has participated in many residential and commercial closings in the five boroughs, I can attest to the lengthy proceedings that sellers and buyers would go through in connection with responsibility for the vault charge tax. It bears repeating that sometimes eliminating a tax will save money in the end to both the City of New York, its government administration, its people, and taxpayers.

I will hazard a guess that I was one of the few attorneys who regularly appeared at the Department of Finance Office at 25 Elm Street, Brooklyn to attend meetings regarding past due COAD taxes. At the Department, I was appalled at the amount of paperwork and stunned at the amount of time devoted by the Finance staff dedicated to trying to collect COAD taxes. It bears witness that not only must a tax make sense but also it must be administered in an orderly and efficient

manner. If it cannot, it will wind up costing the government that imposes the tax more money and will, as the COAD tax almost did, destroy a viable important industry in the City.

Commencing August 1, 1997, the tax on Coin Operated Amusement Devices was repealed by Local Law 48 (1997). After that period, the New York City Department of Finance no longer required owners to file an inventory of their coin-operated amusement devices and the Department no longer issued tax stamps evidencing the filing of amusement machine inventory and the payment of said tax.

Unfortunately, Local Law 48 only repealed the tax and did not repeal the filing requirement or the tax stamp requirement. Further, New York City Police Officers regularly issue summonses for failure to maintain inventory records or tax stamps on amusement devices as the summonses submitted to this Committee will verify.

As an attorney who appears in Criminal Courts throughout the City, I can attest to the fact that I have answered over twenty-five (25) summonses given to owners of coin-operated amusement devices for these offenses. I am informed by the Criminal Court Clerks that numerous other summonses are issued. Judges, Assistant District Attorneys and more importantly, the citizens who received the summonses do not know that the tax has been repealed. This has resulted in guilty pleas, all for a tax that doesn't exist!

This problem dates back to 2001. I thought the matter would be concluded when then Finance Commissioner Andrew S. Eristoff wrote to me and his Deputy Commissioner, Leslie Zimmerman, wrote to the Police Department indicating that the Department does not enforce §11-1504 through §11-1508. However, as indicated in Commissioner Eristoff's letter, legislation was contemplated to repeal these outdated sections of law, but never introduced.

In 2004, I wrote to Commissioner of Finance Martha E. Stark requesting that the Department sponsor Legislation to repeal §11-1504 through §11-1508 (and §11-4013). I do not know why the Department has not taken the initiative to repeal these sections of the Administrative Code. Certainly, the Criminal Courts, after reviewing the law and Commissioner Eristoff's letter dismiss the tickets since it is impossible for any owner of a coin-operated amusement device to receive a tax stamp or maintain records for a tax that doesn't exist.

On behalf of the Board of Directors of A.M.O.A.-N.Y. (Amusement and Music Owners Association of New York), we would gratefully appreciate your sponsorship of the law to repeal those sections of the Administrative Code which have no practical effect, now that the COAD tax has been repealed for over twelve (12) years. Keeping these sections of law "on the books" is costing the taxpayers

precious dollars on Police time, Court time, and, not to mention the businesses who must engage attorneys to attend Criminal Court and request that the summonses be dismissed in the interest of justice.

The relevant chronology concerning the Legislation before the Committee today is, as follows:

1. June 23, 1997. Mayor Giuliani signs legislation which eliminated the tax on coin-operated amusement devices. (Introductory #974). Enclosed, please find the Mayor's press release.
2. After years of receiving summonses for the "crime" of not having tax stamps or records, I wrote to (then) Commissioner of Finance, Andrew S. Eristoff requesting legislation to repeal the stamps and records requirements since the tax has been repealed.
3. November 5, 2001. Commissioner Eristoff responds that he has written to the New York City Police Department regarding the repealed tax and that no stamps or records are required for amusement machines.
4. Three years later, I write to Commissioner of Finance, Martha E. Stark indicating that the NYPD continues to issue summonses regarding stamps and records for the repealed coin-operated amusement device tax.

5. Special Counsel to Finance Commissioner Dara Jaffee, on September 22, 2004, writes to me indicating that the Department will consider possible legislative change.
6. Summonses are still written as the Committee will find from the attached copies.

# Exhibit A



or knowingly under the control of any person; (b) not less than seventy-five dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of five thousand cigarettes but less than or equal to twenty thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; and (c) not less than one hundred dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of twenty thousand cigarettes in unstamped or unlawfully stamped packages, knowingly in the possession or knowingly under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

**HISTORICAL NOTE**

Subd. b amended chap 262/2000 § 10, eff. Nov. 14, 2000.

**CHAPTER 15**

**TAX ON COIN OPERATED AMUSEMENT DEVICES**

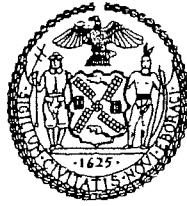
**§ 11-1502 Imposition of tax.**

f. Notwithstanding any provision of law to the contrary, no tax shall be imposed pursuant to this chapter for any tax year beginning on or after August first, nineteen hundred ninety-seven.

**HISTORICAL NOTE**

Subd. f added L.L. 48/1997 § 1, eff. June 23, 1997.

# Exhibit B



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

**FOR IMMEDIATE RELEASE**  
Monday, June 23, 1997

Release #376-97  
[www.ci.nyc.ny.us](http://www.ci.nyc.ny.us)

Contact: Colleen Roche (212) 788-2958  
Dwight Williams (212) 788-2972

### **MAYOR GIULIANI REPEALS TWO TAXES TO HELP SMALL BUSINESSES**

Mayor Rudolph W. Giuliani today signed into law two bills which will help ease the tax burden on small businesses in New York City. The elimination of the Vault Charge Tax and the tax on coin operated amusement devices is part of the City's comprehensive tax reduction and reform program designed to further the goal of improving the small business climate by reducing taxes and eliminating obstacles to conducting business in the City.

"The first and second bills, Introductory 973 and Introductory 974, were sponsored at my request by Council Member Berman," Mayor Giuliani said. "Introductory 973 would amend the Administrative Code of the City of New York by repealing the City's vault charge. The charge is imposed for the privilege of occupying, maintaining or using a vault—a subsurface opening in the streets of New York City. The charge is paid by the owner of the premises immediately adjoining the vault. This bill will provide tax relief to more than 5,000 small businesses.

"Introductory 974, would amend the Administrative Code of the City of New York by eliminating the tax on coin operated amusement devices," the Mayor continued. "This tax, which has been imposed for the privilege of maintaining coin operated amusement devices within the City since 1959, was increased from \$25 to \$175 per device in 1989. The higher tax level has been criticized by affected small business owners as burdensome, especially in regard to the seasonal use of many devices, such as amusement devices used outdoors during summer months.

"Both of these proposals were included in the City's Executive Budget for Fiscal Year 1998 in its tax reduction program and I am happy to be signing them into law today," the Mayor concluded.

(over)

The Giuliani Administration, in partnership with the City Council, the State Legislature and Governor George Pataki, has enacted more tax reductions in the last three years in New York City than in the prior 18 years combined. By the year 2001, these tax cuts will have saved New Yorkers more than \$3.1 billion.

The elimination of the Vault Charge and the tax on coin operated amusement devices is part of an \$835 million tax reduction program contained in the recently adopted budget agreement between the Mayor Giuliani and the City Council, of which \$516 million has already been enacted and \$319 has been added, including:

4% City Sales Tax Reduction	\$ 157 million
Increased UBT Credit	\$ 75 million
Additional CRT Reductions	\$ 30 million
Real Property Transfer Tax Exemption for Assumable Mortgages	\$ 2 million
Eliminate Vault Charge & Tax on Coin Operated Amusement Devices	\$ 8 million
Proportionate Share of State Tax Relief	\$ 47 million
<b>Total</b>	<b>\$ 319 million</b>

# Exhibit C

shall be one-fourth of the tax herein-  
 e of this subdivision the first main-  
 placed device, on which the tax was  
 shall be deemed to be the first such  
 r its replacement.

amusement device, with respect to  
 replaced by another similar device,  
 ble with respect to the replacement  
 ich the tax has been paid. However,  
 spect to the replaced device if it is  
 n the city. Where the tax has been  
 which has not been so replaced, a  
 ship, of such device shall not subject  
 turns are filed as required by sub-  
 of this chapter.

a coin operated amusement device  
 ely for purposes of sale, kept in a  
 premises which are not open for

**MICAL NOTE**

2  
 3  
 2

**IVATION**

1965 § 1

e tax imposed by this chapter shall

r any of its agencies, instrumental-  
 iding a public corporation created  
 ict with another state or Canada) or

erica, and any of its agencies and  
 y are immune from taxation;  
 rier world-wide international organ-  
 ates of America is a member;  
 ation, or trust, or community chest,  
 and operated exclusively for relig-  
 purposes, or for the prevention of  
 and no part of the net earnings of  
 y private shareholder or individual,  
 activities of which is carrying on  
 pting to influence legislation; pro-  
 t this subdivision shall include an  
 ary purpose of carrying on a trade

or business for profit, whether or not all of its profits are payable  
 to one or more organizations described in this subdivision; and

e. Nothing in this section shall exempt from tax under this chap-  
 ter any owner of a juke box or similiar musical device or any other  
 coin-operated amusement device subject to tax under this chapter  
 despite the fact that it is maintained on premises occupied by a  
 person exempted from tax by this section or that any such exempt  
 person is entitled to any part of the proceeds from the device.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1  
 Subd. e amended L.L. 70/1986 § 4  
 Subd. e amended L.L. 30/1986 § 3

**DERIVATION**

Formerly § JJ46-3.0 added LL 79/1965 § 1  
 Sub b amended LL 39/1970 § 1  
 Sub e amended LL 30/1986 § 3

§ 11-1504 **Records to be kept.** Every owner of a coin operated  
 amusement device taxable under this chapter shall keep such re-  
 cords of such owner's business and in such form as the commis-  
 sioner of finance may by regulation require. Such records shall be  
 offered for inspection and examination at any time upon demand  
 by the commissioner of finance, or the commissioner's duly autho-  
 rized agent or employee and shall be preserved for a period of three  
 years, except that the commissioner of finance may consent to their  
 destruction within that period or may require that they be kept  
 longer.

**HISTORICAL NOTE**

Section added chap 907/1985 § 1

**DERIVATION**

Formerly § JJ46-4.0 added LL 79/1965 § 1

§ 11-1505 **Returns.** a. On or before the twentieth day of Au-  
 gust in each year, every owner of a coin-operated amusement de-  
 vice taxable under this chapter shall file a return with the commis-  
 sioner of finance, on a form prescribed by the commissioner of  
 finance, showing the number and type of juke boxes or similar  
 musical devices or any other coin-operated amusement devices sub-  
 ject to tax under this chapter owned and/or being maintained by  
 such person, and such other information as the commissioner of  
 finance may require. The commissioner of finance may provide by  
 regulation that returns be filed at other times, and upon such dates  
 as the commissioner may specify, and may provide that a return be  
 filed within a stated time after any such device is replaced, or  
 moved from the premises where it has been located, or after any  
 change in the ownership of such device.

b. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

c. In the event that any person files a return for any period subsequent to July first, nineteen hundred sixty-five, pursuant to the former title J of chapter forty-six of the code, the return shall be treated as a return filed pursuant to this section and any payment made with or pursuant to such return shall be deemed a payment under this chapter.

#### HISTORICAL NOTE

Section added chap 907/1985 § 1  
Subd. a amended LL 70/1986 § 5  
Subd. a amended LL 30/1986 § 4

#### DERIVATION

Formerly § JJ46-5.0 added LL 79/1965 § 1  
Sub a amended LL 30/1986 § 4

§ 11-1506 **Payment of tax.** At the time of filing a return the owner shall pay to the commissioner of finance the tax imposed hereunder. Such tax shall be due and payable on the last day on which such return is required to be filed, regardless of whether a return is filed or whether the return which is filed correctly indicates the amount of tax due.

#### HISTORICAL NOTE

Section added chap 907/1985 § 1

#### DERIVATION

Formerly § JJ46-6.0 added LL 79/1965 § 1

§ 11-1507 **Stamps.** The payment of the tax imposed by this chapter shall be evidenced by a suitable stamp or other indicia of payment in a form prescribed by the commissioner of finance, and every owner shall place and keep conspicuously posted on the device the stamp or other indicia denoting payment of the tax for the current year.

#### HISTORICAL NOTE

Section added chap 907/1985 § 1

#### DERIVATION

Formerly § JJ46-7.0 added LL 79/1965 § 1

§ 11-1508 **Determination of tax.** If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner of finance shall determine the amount of tax due from such information as may be obtainable and, if necessary, may estimate the tax on the basis of external indices. Notice of such determination shall be given to the person liable for the

payment of the tax. Such determination of the tax shall be made within ninety days after the giving of notice to the commissioner of finance has been received by the commissioner of finance pursuant to section 11-124.0 or requested a conciliation conference within ninety days from the mailing of a copy of the commissioner's confirmation of the conciliation proceeding, both (1) by the commissioner of finance and (2) files with the conciliation tribunal for a hearing, or unless the person or her own motion shall redetermine any appeal to the tax appeals tribunal decision rendered in such hearing, and subject to the requirements of the conciliation tribunal pursuant to sections one hundred seventy two of the charter. A conciliation tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of the tax appeals tribunal sitting in error, illegality or unconstitutionality of the tax ever by a proceeding under article 11 of the law and rules if application thereof by the person against whom the tax is assessed within the months after the giving of the notice of the decision. A proceeding under article 11 of the law and rules shall not be instituted for the amount of any tax sought to be refunded thereon, if any, shall first be approved by the commissioner of finance and a company authorized to transact business by the superintendent of insurance shall file with the commissioner of finance a statement of responsibility, filed with the commissioner of finance the amount and with such sureties as shall approve, to the effect that if the tax confirmed the taxpayer will pay the amount of any tax sought to be refunded in the prosecution of the tax if the taxpayer such undertaking of the taxpayer may be in a sum sufficient to satisfy the interest thereon stated in such decision which may accrue against it in the event the taxpayer shall taxes, penalties and interest as shall be determined by application.

#### HISTORICAL NOTE

Section amended chap 808/1992 § 81  
Section added chap 907/1985 § 1

## DERIVATION

Formerly § DD46-12.0 added chap 765/1985 § 82

§ 11-4013 **Tax on coin-operated amusement devices.** Any person required, pursuant to the provisions of chapter fifteen of this title, to place or keep the stamp or other indicia denoting payment of the tax imposed by such title conspicuously posted on any device taxable under such chapter, who willfully fails to place or keep such stamp or other indicia conspicuously posted on any such device, shall be guilty of a misdemeanor.

## HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap 907/1985 § 14. Number supplied by the Legislative Bill Drafting Commission

## DERIVATION

Formerly § DD46-13.0 added chap 765/1985 § 82

§ 11-4014 **Tax on commercial motor vehicles and motor vehicles for transportation of passengers.** (a) Any person who counterfeits or forges, or causes or procures to be counterfeited or forged, or aids or assists in counterfeiting or forging, by any way, art, or means, any stamp, indicia of payment or indicia that no tax is payable authorized by chapter eight of this title, or who knowingly acquires, possesses, disposes of or uses such a counterfeited or forged stamp, indicia of payment or indicia that no tax is payable, or who transfers a stamp, indicia of payment or indicia that no tax is payable where such a transfer is not authorized by such chapter shall be guilty of a misdemeanor.

(b) The owner or driver of any motor vehicle subject to the tax imposed by chapter eight who, upon demand, shall fail to exhibit the stamp or other indicia of payment of the tax to the commissioner of finance, his duly authorized agent or employee, or any police officer of this city or state, as required by subdivision a of section 11-809 of such chapter, shall be guilty of a misdemeanor.

## HISTORICAL NOTE

Section added chap 765/1985 § 82, language juxtaposed per chap 907/1985 § 14. Number supplied by the Legislative Bill Drafting Commission

## DERIVATION

Formerly § DD46-14.0 added chap 765/1985 § 82

§ 11-4015 **Tax on owners of motor vehicles.** (a) Any person who counterfeits or forges, or causes or procures to be counterfeited or forged, or aids or assists in counterfeiting or forging, by any way, art, or means, any receipt or other document evidencing payment or exemption from the tax imposed by chapter twenty-two of this title, or who knowingly acquires, possesses, disposes of or uses

such a counterfeited or guilty of a misdemeanor.

(b) Any person who operation or parking upon a vehicle owned by him or her, as proposed by chapter twenty-two of this title, shall be guilty of a misdemeanor under the provisions of such chapter. Any person who fails to comply with the provisions of such chapter under shall be guilty of a misdemeanor. Any person who fails to comply with subdivision any person who fails to comply with the provisions of such subdivision shall be presumed to be guilty of a misdemeanor of such motor vehicle.

(c) To the extent that such section is applicable to the tax imposed by such section to the commissioner of finance if desired.

Section added chap 765/1985 § 14. Number supplied by the Legislative Bill Drafting Commission

Formerly § DD46-15.0

§ 11-4016 **Hotel room tax.** Any person who under chapter twenty-five of this title who willfully fails to pay the tax so required, shall be guilty of a misdemeanor.

(b) The penalties provided for in this section shall be in addition to any prosecution pursuant to section 11-4016 of this title for failure of any person to pay the occupancy tax imposed by such person has been required to pay such tax. In any such prosecution, the person shall be deemed to have acted in violation of this section if he or she has been required to collect and remit such tax, and the tax collected by such person by the commissioner of finance.

(c) Any person who fails to comply with the provisions of this section as required pursuant to section 11-4016 of this title and such data in connection with the regulation or enforcement of such section shall be deemed to be in violation of this section. Any person who fails to comply with the provisions of this section shall be deemed to be in violation of this section. Any person who fails to comply with the provisions of this section shall be deemed to be in violation of this section. Any person who fails to comply with the provisions of this section shall be deemed to be in violation of this section.



# Exhibit D

AA-500 (2/00) COMPLAINT/INFORMATION

407779224-1 Susp./Rev. Check  Yes  No

Motorist Exhibited License  Yes  No

State of the State of New York VS. Motorist's Name [REDACTED] M.L. [REDACTED] Apt. No. [REDACTED]

Street Address [REDACTED]

City [REDACTED] State NY Zip Code 11432

Vehicle Information: Make [REDACTED], Model [REDACTED], Year [REDACTED], Color [REDACTED], VIN No. [REDACTED]

Date Expires: [REDACTED]

Operator and/or Owner of Vehicle Bearing License: [REDACTED]

Operator's Name [REDACTED], Address [REDACTED], City [REDACTED], State NY, Zip Code 11432

Operator's License No. [REDACTED], Date Expires [REDACTED]

Operator's Sex [REDACTED], Date of Birth [REDACTED]

Operator's Driver's License No. [REDACTED], State NY, License No. [REDACTED]

Operator's Alternative Plate [REDACTED]

Operator's State [REDACTED]

AA-500 (2/00) COMPLAINT/INFORMATION

407779225-3 Susp./Rev. Check  Yes  No

Motorist Exhibited License  Yes  No

State of the State of New York VS. Motorist's Name [REDACTED] M.L. [REDACTED] Apt. No. [REDACTED]

Street Address [REDACTED]

City [REDACTED] State NY Zip Code 11432

Vehicle Information: Make [REDACTED], Model [REDACTED], Year [REDACTED], Color [REDACTED], VIN No. [REDACTED]

Date Expires: [REDACTED]

Operator and/or Owner of Vehicle Bearing License: [REDACTED]

Operator's Name [REDACTED], Address [REDACTED], City [REDACTED], State NY, Zip Code 11432

Operator's License No. [REDACTED], Date Expires [REDACTED]

Operator's Sex [REDACTED], Date of Birth [REDACTED]

Operator's Driver's License No. [REDACTED], State NY, License No. [REDACTED]

Operator's Alternative Plate [REDACTED]

Operator's State [REDACTED]

AA-500 (2/00) COMPLAINT/INFORMATION

407778017-2 Susp./Rev. Check  Yes  No

Motorist Exhibited License  Yes  No

State of the State of New York VS. Motorist's Name [REDACTED] M.L. [REDACTED] Apt. No. [REDACTED]

Street Address [REDACTED]

City [REDACTED] State NY Zip Code 11435

Vehicle Information: Make [REDACTED], Model [REDACTED], Year [REDACTED], Color [REDACTED], VIN No. [REDACTED]

Date Expires: [REDACTED]

Operator and/or Owner of Vehicle Bearing License: [REDACTED]

Operator's Name [REDACTED], Address [REDACTED], City [REDACTED], State NY, Zip Code 11435

Operator's License No. [REDACTED], Date Expires [REDACTED]

Operator's Sex [REDACTED], Date of Birth [REDACTED]

Operator's Driver's License No. [REDACTED], State NY, License No. [REDACTED]

Operator's Alternative Plate [REDACTED]

Operator's State [REDACTED]

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS:

ALL Time [REDACTED] PM Date of Offense [REDACTED] County [REDACTED] Precinct [REDACTED]

Place of Occurrence [REDACTED] Street [REDACTED]

IN VIOLATION OF [REDACTED]

Sec. 11-15(2)(b) [REDACTED]

Description of Violation: [REDACTED]

Complaint: [REDACTED]

Complainant's Full Name (printed): [REDACTED]

Agency/NCIC: [REDACTED] Squad [REDACTED] Taxpayer's ID: [REDACTED]

Complaint Code: [REDACTED]

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name: [REDACTED] Date: [REDACTED]

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS:

ALL Time [REDACTED] PM Date of Offense [REDACTED] County [REDACTED] Precinct [REDACTED]

Place of Occurrence [REDACTED] Street [REDACTED]

IN VIOLATION OF [REDACTED]

Sec. 11-15(2)(b) [REDACTED]

Description of Violation: [REDACTED]

Complaint: [REDACTED]

Complainant's Full Name (printed): [REDACTED]

Agency/NCIC: [REDACTED] Squad [REDACTED] Taxpayer's ID: [REDACTED]

Complaint Code: [REDACTED]

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name: [REDACTED] Date: [REDACTED]

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS:

ALL Time [REDACTED] PM Date of Offense [REDACTED] County [REDACTED] Precinct [REDACTED]

Place of Occurrence [REDACTED] Street [REDACTED]

IN VIOLATION OF [REDACTED]

Sec. 11-15(2)(b) [REDACTED]

Description of Violation: [REDACTED]

Complaint: [REDACTED]

Complainant's Full Name (printed): [REDACTED]

Agency/NCIC: [REDACTED] Squad [REDACTED] Taxpayer's ID: [REDACTED]

Complaint Code: [REDACTED]

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name: [REDACTED] Date: [REDACTED]

421540213-0

Susp/Rev Check  Yes No   
Motorist Exhibited License  Yes No

The People of The State of New York VS

Last Name [Redacted] First Name [Redacted] M.I. [Redacted]

Street Address [Redacted] Apt. No. [Redacted]

City ELMHURST State NY Zip Code 11372

ID Number [Redacted] Date of Birth [Redacted] Sex M

Lic. State [Redacted] Lic. Class or ID Type [Redacted] Date Expires [Redacted] Operator Owns Vehicle  Yes  No

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No [Redacted] NY CT PA NJ Other [Redacted] Reg Expires [Redacted]

PAS DMF EOM OML Other [Redacted] Chev Ford Honda Dodge Jeep Truck Toyota [Redacted]

Sedan Subv Van Truck MCV Other [Redacted] Veh. Yr [Redacted] Veh. Color [Redacted] Alternate Plate [Redacted] State [Redacted]

VIN No [Redacted]

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time 300 PM  Date of Offense 1-30-04 County Q Precinct 115

Place of Occurrence I/O 81-03 ROOSEVELT AVE

IN VIOLATION OF Sec 11-4013 VTL Traffic Rules Admin. Code Penal Code Other

Description of Violation, if Not Shown Below (If returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE, DATE, AND SIGN INFORMATION ON REVERSE SIDE)

COIN AMUSEMENT DEVICE W/O TAX STAMP

SPEEDING: MPH [Redacted] In MPH Zone [Redacted] DISOBEY TRAFFIC CONTROL:  Sign  Signal  Pavement Marks  Uninspec. Veh  Uninsur Veh  Unreg Veh  Bus  Unlic Oper  Haz Mat

The person described above is summoned to appear at ORIGINAL COURT [Redacted] Summons Part [Redacted] County Q  
Located at 120-55 QUEENS BLVD AR2 Q

Date of Appearance 9:30 a.m. 10 day of MARCH year 2004

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law Affirmed under penalty of perjury

Rank/Full Signature of Complainant [Signature]

Complainant's Full Name (printed) PO NEGRUS Command Code 115

Agency/NCIC NYAD Squad T2 Tax Registry No 928856

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt

Name \_\_\_\_\_ Date \_\_\_\_\_


CRIMINAL COURT INFORMATION (DESCRIBE OFFENSE)

AT TPO, A/D OBSERVED A  
COIN OPERATED JUKEBOX  
W/O A TAX STAMP PASTED  
ON IT.

WARRANT CHECK

Yes  No

I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A Misdemeanor PURSUANT TO SECTION 210.45 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.

1/30/04 Date  Signature

DEFENDANT DESCRIPTION

Eye Color \_\_\_\_\_ Hair Color \_\_\_\_\_ Ethnicity \_\_\_\_\_  
HI \_\_\_\_\_ Wt. \_\_\_\_\_ Phone # \_\_\_\_\_

ARRAIGNMENT

Defendant pleads  Guilty  Not Guilty

\_\_\_\_\_ Date \_\_\_\_\_ Judge \_\_\_\_\_

①

②



x 4 2 1 5 4 0 2 1 3 0 x

SUMMONS

423699776-3

Susp/Rev Check  Yes  No   
Motorist Exhibited License  Yes  No

The People of The State of New York VS.

Last Name First Name M.I.

Street Address Apt. No.

City State Zip Code

ID Number Date of Birth Sex

Lic. State Lic. Class or ID Type Date Expires Operator Owns Vehicle

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No. NY CT PA NJ Other Reg. Expires

P.L.V. MAKE PAS OMT COM OML Other CHEV FORD HONDA DODG OLDS BUICK TOYOT NISS Other

BEOTDYVE SEDAN SUBN VAN TRUCK MCY Other Veh. Yr. Veh. Color Alternate Plate State

VIN No.

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time PM Date of Offense County Precinct

Place of Occurrence

IN VIOLATION OF

Sec Sub Description of Criminal Court Offense (including Traffic Misdemeanor)

SPEEDING		DISOBEY	TRAFF.	CONT	DEV	Uninspec. Veh.	Unreg. Veh.	Unlic. Oper.
MPH	In MPH Zone	<input type="checkbox"/> Sign	<input type="checkbox"/> Pave	<input type="checkbox"/> Signal	<input type="checkbox"/> Marks	Uninsur. Veh.	Com. Veh.	Bus. Haz. Mat.

The person described above is summoned to appear at CRIMINAL COURT Summons Part County

Located at 88-94 VISITATION PL ARL KINGS

Date of Appearance 9:30 a.m. 19 day of DEC year 2004

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant

Complainant's Full Name (printed) Command Code

Agency/NCIC Squad Tax Registry No.

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name Date

Book # 2004 5B 010 851

CRIMINAL COURT INFORMATION (DESCRIBE OFFENSE)

On 11/10/04 respondent did fail to display a valid NY's Tax stamp, properly affixed to a coin operated jukebox in his premises

WARRANT CHECK  Yes  No

I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY

11/10/04 Date Signature [Signature]

DEFENDANT DESCRIPTION

Eye Color \_\_\_\_\_ Hair Color \_\_\_\_\_ Ethnicity \_\_\_\_\_  
Ht. \_\_\_\_\_ Wt. \_\_\_\_\_ Phone # \_\_\_\_\_

ARRAIGNMENT

Defendant pleads  Guilty  Not Guilty  
Date \_\_\_\_\_ Judge \_\_\_\_\_

①  
DEC 14 2004  
APAR6  
HON. A. CALABRES  
RPTR. CIANCARUS

②



2004SB010851

AA-500.2 (9/03)

SUMMONS

421778135-0

Susp/Rev Check  Yes No   
Motorist Exhibited License  Yes No

The People of The State of New York VS.

Last Name First Name M.I.  
Street Address Apt. No.

City State Zip Code

ID Number Date of Birth Sex

Lic. State Lic. Class or ID Type Date Expires Operator Owns Vehicle

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No. NY CT PA NJ Other Reg. Expires

P.T. L.V. A.P.P.E. PAS OMT COM OML Other MAKE CHEV FORD HONDA DODG OLDS BUICK TOYT NISS Other

Model Year Veh. Color Alternate Plate State

VIN No.

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time PM Date of Offense County Precinct

Place of Occurrence

IN VIOLATION OF

Description of Criminal Court Offense (including Traffic Misdemeanor)

Coin operated Amusement Device

SPEEDING DISOBEY TRAFF CONT DEV Uninspec. Veh. Unreg. Veh. Unlic. Oper.

The person described above is summoned to appear at CRIMINAL COURT. Summons Part County

Located at Date of Appearance

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant

Complainant's Full Name (printed) Command Code

Agency/NCIC Squad Tax Registry No.

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name Date

HP:  
 Larry  
 2m/g  
 Same

AA-800.2 (2/04) **SUMMONS**

**424818168-0**

The People of The State of New York VS.  Susp/Rev Check  Yes  No  Motorist Excluded License  Yes  No

Last Name: [REDACTED] First Name: [REDACTED] M.I.: [REDACTED]

Street Address: [REDACTED] Apt. No.: [REDACTED]

City: New York State: NY Zip Code: 10036

ID Number: [REDACTED] Date of Birth: 11-02-84 Sex: M

Lic. State: NY Lic. Class or ID Type: B Date Expires: 12-05-12 Operator Class Vehicle:  Yes  No

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No.: [REDACTED] NY CT PA NJ Other Reg. Expires: [REDACTED]

PAS	CHV	OPH	GLE	Other	CHEV	PONV	HONDA	DOOD	CLUB	BUC	TOY	HISV	Other
-----	-----	-----	-----	-------	------	------	-------	------	------	-----	-----	------	-------

SEMI	BUS	VAN	TRUCK	MCV	Other	State
------	-----	-----	-------	-----	-------	-------

VIN No.: [REDACTED]

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time PM Date of Offense: 11:40 PM 2/11/05 County: Tangs Precinct: 072

Place of Occurrence: 15369 36 St

INVIOLATION OF: Vehicle Stop

Description of Criminal Court Offense (including Traffic Misdemeanor): no tax stamp, Junk Box

MPH: [REDACTED] Unreg. Veh.: [REDACTED] Unlic. Oper.: [REDACTED]

The person described above is summoned to appear at CRIMINAL COURT Summons Per: County

Located at: 55 Gull Vista Dr of Park View

Date of Appearance: 8:30 a.m. 07 day of March year 2005

I personally observed the commission of the offense charged above. False statements made hereby are punishable as a Class A Misdemeanor pursuant to Section 210.48 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant: [REDACTED]

Complainant's Full Name (printed): [REDACTED] Comment Code: 072

Agency/NCIC: [REDACTED] Squad: W/S The Registry No.: 559109

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

CRIMINAL COURT

Date apprehended 3/8/05

Tangs Cm/g Vendit. 369 3640



425386216-1

Susp/Rev Check  Yes No   
Motorist Exhibited License  Yes No

The People of The State of New York VS

Last Name ~~XXXXXXXXXX~~ First Name ~~XXXXXXXXXX~~ M.I.

Street Address ~~XXXXXXXXXX~~ Apt. No.

City Glendale State NY Zip Code 11385

ID Number ~~XXXXXXXXXX~~ Date of Birth ~~XXXX/XX/XX~~ Sex ~~M~~

Lic. State NY Lic. Class or ID Type D Date Expires MO 1 DAY YR 12 Operator Owns Vehicle  Yes  No

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Platn No NY CT PA NJ Other Reg Expires

PAS DIRT COM CAR OTHER CHEV FORD HONDA BUICK TOYOTA Other

SEDAN SUBV VAN TRUCK MCV Other Veh Color Alternate Plate State

VIN No

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time 1100 PM Date of Offense 11/10/05 County Precinct 102

Place of Occurrence 96-03 4 101 Ave

IN VIOLATION OF 11-4013 VTL Traff Rules Agency Code Police Code Other

Description of Violation, if Not Shown Below (if returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE DATE AND SIGN INFORMATION ON REVERSE SIDE)

W/D TAX Stamp (coin oper)

SPEEDING DISOBEY TRAFF CONT DEV Uninsur Veh Unreg Veh Unlic Oper  
MPH In MPH Zone  Sign  Pave  Veh  Veh  Veh  
 Signal  Marks Unsur Veh Com Veh Bus Haz Mat.

The person described above is summoned to appear at CRIMINAL COURT Summons Part County  
Located at 120-55 Queens Blvd AD 2 4

Date of Appearance 9 30 a m 10 day of JAN year 06

I personally observed the commission of the offense charged above. False statements made here in are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant

Complainant's Full Name (printed) Correction Code

Agency: NCIC Squad 9326 Tax Reg No

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name Date

428016555-1

Susp/Rev Check L1 tes no L1  
Motorist Exhibited License  Yes No

The People of The State of New York VS

Last Name First Name M.I.

Street Address Apt. No.

City State Zip Code  
Richmond Hill NY 11419

ID Number Date of Birth Sex  
M

Lic. State Lic. Class or ID Type Date Expires Operator Owns Vehicle  
NY D 12 07 12  Yes No

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE  
Plate No Reg Expires

VEHICLE MAKE MODEL YEAR COLOR ALTERNATE PLATE STATE  
VIN No

9006 SD 03 969

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time PM Date of Offense County Precinct  
07:25 4/3/18 06 Q 106  
Place of Occurrence I/O 128-12 Liberty Ave

IN VIOLATION OF Sec 11-1504 SUB VTL Traffic Admin Penal Other  
Punish Code X

Description of Violation (If returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE PAGE, AND SIGN INFORMATION ON REVERSE SIDE)

No records for gain operated service

SPEEDING In MPH Zone Disobey Traffic Cont. Div. Unspec Veh. Unreg Veh. Unlic Oper.  
MPH  Sign  Pave  Uninsur Veh. Corn Veh. Bus Haz. Mat.  
 Signal  Marks

The person described above is summoned to appear at CRIMINAL COURT Summons Par Court  
Located at: 120-55 Queens Blvd A22 Q

Date of Appearance 9:30 a.m. 15 day of May year 06

I personally observed the commission of the offense charged above. False statements made hereon are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank and Signature of Complainant  
PO Diana Coty

Complainant's Full Name (Printed) Command Code  
PO Coty 100

Agency/NCIC Squad Tax Registration  
NYPD C1 891411

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name \_\_\_\_\_ Date \_\_\_\_\_

428016555-0

CRIMINAL COURT INFORMATION (DESCRIBE OFFENSE)

AT 110 Ho did observe a coin operated  
amusement device inside premise  
that deft had no kept  
records for:  
Maracas Island Cuisine  
The Real Broadway machine

WARRANT CHECK  Yes  No

I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.

3/18/06  
Date

P. D. Cotto  
Signature

DEFENDANT DESCRIPTION

Eye Color \_\_\_\_\_ Hair Color \_\_\_\_\_ Ethnicity \_\_\_\_\_  
Ht. \_\_\_\_\_ Wt. \_\_\_\_\_ Phone # \_\_\_\_\_

ARRAIGNMENT

Defendant pleads  Guilty  Not Guilty

Date

Judge

①

②



AA-500 (4/05)

COMPLAINT/INFORMATION

427914911-2

Susp/Rev Check  Yes  No   
Motorist Exhibited License  Yes  No

The People of The State of New York VS.

Last Name [REDACTED] First Name [REDACTED] M.I. [REDACTED]

Street Address [REDACTED] Apt. No. [REDACTED]

City ELMHURST ST State NY Zip Code 11373

ID Number [REDACTED] Date of Birth [REDACTED] Sex M

Lic. State NY Lic. Class or ID Type E Date Expires [REDACTED] Operator Owns Vehicle  Yes  No

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No. [REDACTED] NY CT PA NJ Other [REDACTED] Reg. Expires [REDACTED]

PAS OMT COM OML Other [REDACTED] CHEV FORD HONDA [REDACTED] OLDS BUCK TOYT MISS Other [REDACTED]

SEDAN SUBN VAN TRUCK [REDACTED] Other [REDACTED] Veh. Yr. [REDACTED] Veh. Color [REDACTED] Alternate Plate [REDACTED] State [REDACTED]

VIN No. [REDACTED]

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time PM Date of Offense 11:20 3/29/06 County King Precinct 072

Place of Occurrence 225 47

IN VIOLATION OF Sec 11403 Sub VTL [REDACTED] Traff. Rules [REDACTED] Admin. Code [REDACTED] Penal Code [REDACTED] Other [REDACTED]

Description of Violation, if Not Shown Below. (If returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE, DATE, AND SIGN INFORMATION ON REVERSE SIDE.)

COIN OPERATED AMUSEMENT DEVICE NO TAX STAMP

SPEEDING MPH [REDACTED] In MPH Zone [REDACTED] DISOBEY TRAFF CONT DEV  Sign  Pave  Signal  Marks [REDACTED] Uninspec. Veh. [REDACTED] Unreg. Veh. [REDACTED] Unlic. Oper. [REDACTED] Uninsur. Veh. [REDACTED] Com. Veh. [REDACTED] Bus [REDACTED] Haz. Mat. [REDACTED]

The person described above is summoned to appear at CRIMINAL COURT Summons Part APR6 County King

Located at 8894 Visitation PL Date of Appearance 9:30 a.m. 25 day of April year 2006

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class B Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Title [REDACTED] Signature of Complainant [REDACTED]

Complainant's Full Name (printed) Anson Command Code 072

Agency/NCIC NYSP Squad MS Tax Registry No. 923517

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name \_\_\_\_\_ Date \_\_\_\_\_

428010553-1

The People of The State of New York VS

Suspect/Check Lites  No  Yes  
Motorist Exhibited License  Yes  No

Last Name ~~XXXXXXXXXX~~ First Name ~~XXXXXXXXXX~~  
Street Address ~~XXXXXXXXXX~~ Apt. No. ~~XXXX~~

2006 54032689

City Schmond Hill State NY Zip Code 11419

ID Number ~~XXXXXXXXXX~~ Date of Birth ~~XXXX-XX-XX~~ Sex M

Lic. State NY Lic. Class or ID Type 12 Date Expires 12 07 12 Operator Owns Vehicle  Yes  No

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No.	NY	CA	PA	NJ	Other	Exp. MO	DAY	YR					
PAS	COM	COM	COM	Other	CHEV	FORD	HONDA	DOOD	OLDS	BUICK	TOY	NISS	Other
SECAN	SEWH	VAN	TRUCK	MOT	Other	Ver. Yr	Ver. Color	Alternate Plate	State				

VIN No

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS  
AM Time 07:25 PM Date of Offense 03/18/06 County Q Precinct 106

Place of Occurrence 110 128-12 Liberty Ave

IN VIOLATION OF  
Sec 11-4013 VTL 11-4013 Fed. Rules 11-4013 Admin. Code 11-4013 Penal Code 11-4013 Other 11-4013

Description of Violation, if Not Shown Below. (If returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE, DATE, AND SIGN INFORMATION ON REVERSE SIDE.)

Coin operated Amusement Device w/o Tax Stc

SPEEDING	NOB EY TRAFF CON: DRV	Uninspec. Veh	Unreg Veh	Unlic Oper
MPH	MPH Zone	<input type="checkbox"/> Sign <input type="checkbox"/> Pavement Marks	<input type="checkbox"/> Signal	<input type="checkbox"/> Uninsur. Veh <input type="checkbox"/> Com. Veh <input type="checkbox"/> Bus <input type="checkbox"/> Haz Mat

This person described above is summoned to appear at ORIGINAL COURT Summons Part AB2 County Q

Located at 120-55 Queens Blvd Date of Appearance 9:30 a.m 15 day of May year 06

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Title PO Signature of Complainant Wena Cobby

Complainant's Full Name (Printed) PO Cobby Command Code 106

Agency/NCIC NYPD Squad C1 Tax Registry No 891411

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name \_\_\_\_\_ Date \_\_\_\_\_

428016553-1

CRIMINAL COURT INFORMATION (DESCRIBE OFFENSE)

AT 11:10 PM I did observe a coin  
operated amusement device  
inside premises: Maracas Island  
Casino that left had no  
issued tax stamp for

WARRANT CHECK

Yes

No

I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATE-  
MENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45  
OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.

3/18/06  
Date

P. J. Deha  
Signature

DEFENDANT DESCRIPTION

Eye Color \_\_\_\_\_ Hair Color \_\_\_\_\_ Ethnicity \_\_\_\_\_

Ht. \_\_\_\_\_ Wt. \_\_\_\_\_ Phone # \_\_\_\_\_

ARRAIGNMENT

Defendant pleads  Guilty  Not Guilty

Date

Judge

①

②



431672466-6

The People of The State of New York VS.

Susp/Rev Check  Yes  No   
Motorist Exhibited License  Yes  No

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ M.I. \_\_\_\_\_  
Street Address \_\_\_\_\_ Apt. No. \_\_\_\_\_

City Middle Village State NY Zip Code 11379

ID Number \_\_\_\_\_ Date of Birth \_\_\_\_\_ Sex M

Lic. State \_\_\_\_\_ Lic. Class or ID Type \_\_\_\_\_ Date Expires \_\_\_\_\_ Operator Owns Vehicle  Yes  No

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No. \_\_\_\_\_ Reg. Expires \_\_\_\_\_

VEHICLE MAKE: PAS, OMT, COM, OML, Other, CHEV, FORD, HONDA, TOYOTA, OLDS, BUICK, TOYT, NISS, Other

VEHICLE TYPE: SEDAN, SUBN, VAN, TRUCK, MCY, Other, Veh. Yr., Veh. Color, Alternate Plate, State

VIN No. \_\_\_\_\_

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM  Time 0117 PM  Date of Offense 11/21/08 County QNS Precinct 104

Place of Occurrence 62-10 Woodhaven Blvd

IN VIOLATION OF \_\_\_\_\_  
Sec. NOV-13 Sub \_\_\_\_\_

Description of Violation, if Not Shown Below. (If returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE, DATE, AND SIGN INFORMATION ON REVERSE SIDE.)

NO Tax Stamp coin OP Amendment

SPEEDING: MPH \_\_\_\_\_ In MPH Zone \_\_\_\_\_  
DISOBEY TRAFF CONT DEV:  Sign  Pave  Signal  Marks  
Uninspec. Veh. \_\_\_\_\_ Unreg. Veh. \_\_\_\_\_ Unlic. Oper. \_\_\_\_\_  
Uninsur. Veh. \_\_\_\_\_ Com. Veh. \_\_\_\_\_ Bus \_\_\_\_\_ Haz. Mat. \_\_\_\_\_

The person described above is summoned to appear at CRIMINAL COURT Summons Part \_\_\_\_\_ County QNS

Located at 120-55 QNS Blvd FLA2 QNS  
Date of Appearance 9:30 a.m. 27 day of January year 2009

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant PO Perillo

Complainant's Full Name (printed) PO Perillo Command Code 104

Agency/NCIC NYPD Squad A2 Tax Registry No. 943660

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name \_\_\_\_\_ Date \_\_\_\_\_

2009 SA  
005383

**CRIMINAL COURT INFORMATION (DESCRIBE OFFENSE)**

~~A~~ TIPIC ALO Did observe  
Delt with coin op  
7 amusement Devices in  
30's Pub while presenting  
no tax stamp for devices.

WARRANT CHECK  Yes  No 223690

PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.

11/21/08 R J. Redd  
Date Signature

**DEFENDANT DESCRIPTION**

Eye Color Blue Hair Color 5'07 Ethnicity White  
Ht. 5'07 Wt. 160 Phone # Brown.

**ARRAIGNMENT**

Defendant pleads  Guilty  Not Guilty

Date Judge

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②



\* 4 3 1 5 7 2 4 5 5 5 \*



428238289-2

The People of The State of New York VS.

Susp/Rev Check  Yes  No   
Motorist Exhibited License  Yes  No

Last Name First Name M.I.

Street Address Apt. No.

City State Zip Code

ID Number Date of Birth Sex

Lic. State Lic. Class or ID Type Date Expires Operator Owns Vehicle

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No. NY CT PA NJ Other Reg. Expires

PAS OMT COM OML Other CHEV FORD HONDA DODG OLDS BUICK TOYT NISS Other

SEDAN SUBN VAN TRUCK Other Veh. Yr. Veh. Color Alternate Plate State

VIN No.

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time PM Date of Offense County Precinct

Place of Occurrence

IN VIOLATION OF

Sec 110V-13 Sub

V.T.L. Traff. Rules Admin. Code Penal Code Other

Description of Violation, if Not Shown Below. (If returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE, DATE, AND SIGN INFORMATION ON REVERSE SIDE.)

FAIL TO DISPLAY TAX STAMP COLN.

Table with columns: SPEEDING (MPH, In MPH Zone), DISOBEY TRAFF CONT DEV (Sign, Signal, Pave Marks), Uninspec. Veh., Uninsur. Veh., Unreg. Veh., Com. Veh., Bus, Unlic. Oper., Haz. Mat.

The person described above is summoned to appear at CRIMINAL COURT Summons Part County

Located at 120-55 QUEEN 136 A22 QW

Date of Appearance 9:30 a.m. 27 day of JAN year 2009

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant

Complainant's Full Name (printed) Command Code

MOWBRAY 107

Agency/NCIC Squad Tax Registry No.

NYPD A1 9254

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name Date

2009 52  
006209

**CRIMINAL COURT INFORMATION (DESCRIBE OFFENSE)**

At 7:00 DENT Fall  
10. 10000 TRS ST 20  
for car after M. 2012

WARRANT CHECK

Yes  No

221787

I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.

11-21-08

*[Signature]*

Date \_\_\_\_\_ Signature \_\_\_\_\_

**DEFENDANT DESCRIPTION**

Eye Color \_\_\_\_\_ Hair Color \_\_\_\_\_ Ethnicity \_\_\_\_\_  
Ht. \_\_\_\_\_ Wt. \_\_\_\_\_ Phone # \_\_\_\_\_

**ARRAIGNMENT**

Defendant pleads  Guilty  Not Guilty

Date \_\_\_\_\_ Judge \_\_\_\_\_

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# Complaint/Information

The People of The State of New York vs.

Name (Last, First, MI)					
Street Address					Apt. No.
City			State	Zip Code	
Rego Park			NY	[REDACTED]	
ID/License Number		State	Type/Class	Expires (mm/dd/yy)	
[REDACTED]		NY	D	07-31-08	
Date of Birth (mm/dd/yy)	Ht	Wt	Eyes	Hair	Plate/Reg
[REDACTED]	5'6"	96	Br	Br	
Reg State	Expires (mm/dd/yy)	Plate Type	Veh Type	Make	Year

### The Person Described Above is Charged as Follows:

Time 24 Hour (hh:mm)	Date of Offense (mm/dd/yy)	County				
0530	02-21-09	Q				
Place of Occurrence		Precinct				
62-10 Woodhaven Blvd		104				
In Violation of Section	Subsection	VTL	Admin. Code	Penal Law	Park Rules	Other
11-4013		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Title of Offense: Coin operated amusement device

Factual Allegations (describe offense):  
ATM/P/O Dept being acting manager of bar did allow coin operated machines to used without NYS tax Stamp.

endant stated in my presence (in substance):

sonally observed the commission of the offense charged herein. False statements made herein are punishable as Class A Misdemeanor pursuant to section 210.45 of the Penal Law. Affirmed under penalty of law.

Complainant's Full Name Printed		Rank/Full Signature of Complainant		Date Affirmed (mm/dd/yy)
A Bianchini		P.O. [Signature]		02-21-0
Agency	Tax Registry #	Command Code		
NYPD	942997	104		
Person described above is summoned to appear at NYC Criminal Court			Summons Part	County
Addressed at:			AR2	Q
Date of Appearance (mm/dd/yy)				
04/29/09				

At 9:30 a.m.

ORIGINAL

4400821055

# Exhibit E

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: PART AP 1

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Docket No: 2009 SQ 030422  
2009 SQ 030420  
2009 SQ 030419

-against-

NOTICE OF MOTION

[REDACTED]

Defendant.

Summons Nos.: 4400821055  
4400821020  
4400821018

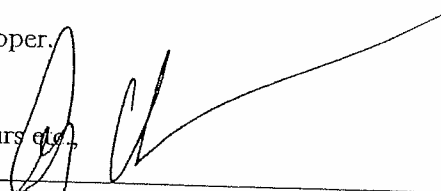
-----X  
SIR/MADM:

Return date: 5/21/09

PLEASE TAKE NOTICE that upon the annexed Affidavit [REDACTED] sworn to on the 4<sup>th</sup> day of May, 2009, the Affirmation of Cary David Kessler, Esq., affirmed on May 4, 2009, and upon the complaints/informations filed against the above named defendant in this Court on the 29<sup>th</sup> day of April, 2009, the undersigned will move this Court at Part AP-1 of the Criminal Court of the City of New York, County of Queens, 125-01 Queens Boulevard, Kew Gardens, New York 11415, on the 21<sup>st</sup> day of May, 2009, for an Order vacating and setting aside the conviction entered herein against the Defendant on April 29, 2009, and dismissing the three Complaints/Informations listed above pursuant to §170.30(1)(a) of the Criminal Procedure Law upon the ground that the complaints/informations are defective within the meaning of §170.35 of the Criminal Procedure Law or in the alternative, permitting Defendant to defend herself on the merits upon the grounds set forth in the annexed affidavit and affirmation and why such other and further relief should not be granted as may be just and proper.

Dated: Jericho, New York  
May 4, 2009

Yours etc,

  
Cary David Kessler, Esq.  
Farley & Kessler, P.C.  
Attorneys for Defendant  
55 Jericho Turnpike, Suite 204  
Jericho, NY 11753  
516-433-4220

CLERK OF COURT  
COUNTY OF QUEENS  
MAY 19 2009

To: Criminal Court Clerk  
County of Queens, Part AP-1  
125-01 Queens Boulevard  
Kew Gardens, New York 11415  
718-520-3855

District Attorney for Queens County  
125-01 Queens Boulevard  
Kew Gardens, New York 11415  
718-286-6000

2009 MAY -6 P 12:42

CRIMINAL COURT


CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: PART AP 1

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Docket No: 2009 SQ 030422  
2009 SQ 030420  
2009 SQ 030419


-against-

**AFFIRMATION IN SUPPORT  
OF MOTION**

  
Defendant.

Summons Nos.: 4400821055  
4400821020  
4400821018

-----X  
CARY DAVID KESSLER, ESQ., affirms under the penalties of perjury, the following:

- 1) I am an attorney licensed to practice law in the Courts of the State of New York.
- 2) I am a named principal with the law firm of Farley & Kessler, P.C., 55 Jericho Turnpike, Suite 204, Jericho, New York 11753-1013, the attorneys for the Defendant herein.
- 3) I am familiar with the facts hereinafter stated.
- 4) I am also the General Counsel of the Amusement and Music Owners Association of New York, (AMOA-NY), a not for profit business organization, organized for the betterment of the Amusement Industry. I am fully familiar with the City and State Laws that apply to amusement machines (juke boxes, pool tables, games) and bars/taverns.
- 5) Defendant  on February 21, 2009 was served with three complaints/informations at 62-10 Woodhaven Blvd., in the County of Queens. Annexed as *Exhibit A* is a copy of the complaints/informations describing the offenses charged.

Summons Number 4400821055/Violation of Section 11-4013 NYC Admin. Code

6) Defendant is charged with violating a section of the New York City Administrative Code, having to do with coin operated amusement machines "without a NYS Tax Stamp" (I assume that the police officer meant a City of New York Tax Stamp, since he cites the Administrative Code of the City of New York, and not the General Business Law of the State of New York. There is no tax stamp for amusement machines under any NYS statute that I am familiar with).

7) The violation of not having a tax stamp is defective for the following

reasons:

- a. On June 23, 1997 Local Law 48 became effective, which repealed any tax on coin operated amusement devices. Annexed as *Exhibit B* is a copy of the Administrative Code, legislative update and the Mayor of the City of New York's press release, detailing the repeal.
- b. Unfortunately, even though the tax was repealed, several vestiges of the tax remained, including the issuance of tax stamps, and the requirement to keep records of tax stamps. However, there is no tax! The NYC Department of Finance, since August 1997, has not produced any tax stamps.
- c. Since 2001, the Department of Finance has written to the Police of the City of New York, requesting that the §11-4013 should not be enforced because there are no tax stamps or filing of payments for a tax on amusement machines. Annexed as *Exhibit C* are copies of letters from the Department of Finance from 2001 to the Police of the City of New York, and the undersigned, concerning this policy. Even without these letters, the defendant, or the individuals who own the amusement machines could not possibly carry out the law, since no tax stamps exist for a repealed tax since August, 1997!
- d. If the above is not enough to have this Complaint/Information dismissed, in 2005 the New York City Council repealed the term "coin-operated amusement device" and replaced it with "player-operated amusement device", Local Law 58-2005. This new term is part of section 20-211 (definitions of NYC administrative code) Department of Consumer Affairs. Annexed as *Exhibit D* is a copy of that administrative code showing that the term is now "player-operated amusement device". The City Council changed the definition because of new electronic games and electronic components that are now part and parcel of amusement machines. Therefore, the police officer writing the above summons using the term "coin-operated amusement device" nullifies the entire complaint/information,

because there is no such term found anywhere in the administrative code since 2005.

Summons 4400821020 - Unlicensed Billiards

8) Section 20-216 of the Administrative Code of the City of New York, licenses billiard and pocket billard rooms. There is no law concerning the licensing of billiards or pool tables.

9) On July 3, 2007 the Mayor of the City of New York signed legislation increasing the amount of billiard tables permitted at a location before a billiard room license is required. Annexed as *Exhibit E* is a copy of the local law signed by the Mayor, Local Law #32 of 2007.

10) The Court is request<sup>ed</sup> to review the local law. "Any room or place in the city which billiards or pocket billiards are played, and which includes three or more billiard or pocket billiard tables, ....." must apply for a license to the NYC Department of Consumer Affairs.

11) The factual allegations as detailed by the Police Officer in the above complaint/information indicates that "Defendant acting as manager allowed billiards table to be used without a billiards license". What her status as manager has to do with the statute is unknown. In addition, the officer indicates that there is only one table available and that was the offense. Therefore the officer is wrong on several counts, and the complaint/information is facially deficient.

4400821018 - Allow Consp. After Hours - ABC Section 105.5

12) This complaint/information apparently refers to a section of the Alcoholic Beverage Control Law which governs licensees selling alcohol for consumption off the premises. The statutory mandate, as indicated in the copy of the Law annexed for the Court's quick reference, under *Exhibit F*, applies to retail licensees of liquor, and concerns off premises consumption. A reading of the Complaints/Informations under *Exhibit A*, indicates that " ....



Defendant was person in charge at above bar, and allowed consp. (meaning consumption I guess) of alcohol after 0430HRS.” Once again, what connection the defendant has with the retail licensee is not made clear in the allegation, and it is also not made clear in the allegation if any consumption of alcoholic beverage occurred on premises or off premises. All we know is that the police officer alleges some alcohol consumption after 4:30 in the morning. That certainly is not a fair reading of Section 105.5 of the Alcoholic Beverage Control Law.

13) It is obvious that this Complaint/Information must also be dismissed for facial insufficiency.

Facial Insufficiency

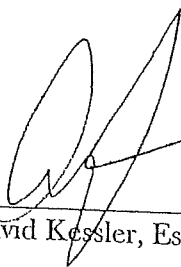
14) Annexed as *Exhibit G* are recent decisions from Judges of the Criminal Court of the City of New York, County of Queens:

- a. *People v. Flores*, Docket No. 2006SQ040963tr4
- b. *People v. Tagore*, Docket No. 2003SQ025802
- c. *People v. Barrack*, Docket No. 2004SQ026288
- d. *People v. Gopaul*, Docket No. 2003SQ000160

15) This affirmation is made in support of defendant’s motion for an Order pursuant to §170.30(1)(a) of the Criminal Procedure Law dismissing the complaints/informations upon the ground that the said accusatory instruments are defective within the meaning of §170.35(1)(a) of the Criminal Procedure Law and that the defect of said accusatory instruments are not of a kind curable by amendment.

WHEREFORE, your Affirmant respectfully requests that this motion be granted in all respects, and that the complaints/informations against the defendant be dismissed, or should be given the opportunity to present further defenses at the appropriate time, together with such other and further relief as this court deems just and proper.

Affirmed this 14<sup>th</sup> day of May, 2009, at Jericho, New York.

  
\_\_\_\_\_  
Cary David Kessler, Esq.

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: SUMMONS PART AP-4

----- X  
THE PEOPLE OF THE STATE OF NEW YORK,

Docket Nos.: 2006 SQ 039689  
2006 SQ 039699  
2006 SQ 039695

-against-

Summons Nos: 428016554-3  
428016552-0  
428016553-1

D [REDACTED]

D/O/B: 12/7/70

Defendant.

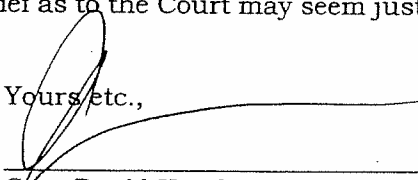
**NOTICE OF MOTION**

Return Date: June 26, 2006

----- X  
SIR/MADAM:

PLEASE TAKE NOTICE that upon the annexed affirmation of Cary David Kessler, Esq., affirmed on May 18, 2006, and upon the complaints/informations filed against the above named defendant in this Court on the 15<sup>th</sup> day of May, 2006, the undersigned will move this Court at Part AP-4 of the Criminal Court of the City of New York, County of Queens, 125-01 Queens Boulevard, Kew Gardens, New York 11415, on the 26<sup>th</sup> day of June, 2006, to dismiss the above complaint/information pursuant to §170.30(1)(a) of the Criminal Procedure Law upon the ground that the complaints/informations are defective within the meaning of §170.35 of the Criminal Procedure Law and upon such other and further relief as to the Court may seem just and proper.

Dated: Jericho, New York  
May 18, 2006

Yours/etc.,  


Cary David Kessler, Esq.  
FARLEY & KESSLER, P.C.  
Attorneys for Defendant  
410 Jericho Turnpike, Suite 315  
Jericho, New York 11753  
(516) 433-4220

To: Criminal Court Clerk  
County of Queens, Part AP-4  
125-01 Queens Boulevard  
Kew Gardens, New York 11415  
(718) 520-3855

District Attorney for Queens County  
125-01 Queens Boulevard  
Kew Gardens, New York 11415  
(718) 286-6000

26116NoticeMotion

2006 MAY 18 PM 02

CRIMINAL COURT

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: SUMMONS PART AP-4  
----- X  
THE PEOPLE OF THE STATE OF NEW YORK,

Docket Nos.: 2006 SQ 039689  
2006 SQ 039699  
2006 SQ 039695

-against-

Summons Nos: 428016554-3  
428016552-0  
428016553-1

D [REDACTED]  
D/O/B: 12/7/70

Defendant.

**DEFENDANT'S AFFIRMATION  
IN SUPPORT OF MOTION**

----- X  
STATE OF NEW YORK)  
COUNTY OF NASSAU ) SS.:

CARY DAVID KESSLER, ESQ., affirms under the penalty of perjury, the following:

1.) I am an attorney duly licensed to practice law in the State of New York. I am a named principal in the law firm of Farley & Kessler, P.C., with offices located at 410 Jericho Turnpike, Suite 315, Jericho, New York 11753, the attorneys for the defendant herein.

2.) I am familiar with the facts hereinafter stated.

3.) I am also the General Counsel of the Amusement and Music Owners Association of New York, Inc. (AMOA-NY). This is a not-for-profit business organization organized for the betterment of the amusement machine industry. As such, I am fully familiar with City and State Laws that apply to amusement machines, (juke boxes, pool tables, games) and bars/taverns.

4.) Defendant, [REDACTED], was served with three (3) complaints/informations on March 18, 2006 at 128-12 Liberty Avenue, Queens, New York. Annexed as Exhibit L is a copy of the complaints/informations including the pages that describes the alleged offenses.

**Coin Operated Amusement Device Tax**

5.) Defendant is charged with violating §11 sub-division 1504 and sub-division 4013, relating to the tax on coin operated amusement devices.

6.) The tax on coin-operated amusement devices was repealed by Local Law 1997 #48 effective August, 1997. Annexed as Exhibit M are copies of the Legislative Update and Mayor's Press Release regarding the repeal of this tax.

7.) Although the City Council repealed the tax, it failed to repeal the stamp itself along with the requirement to keep records. However, the Commissioner of Finance in a 2001 letter to your affirmant informed me and the New York Police Department that "the posting of a tax stamp and the maintenance of COAD records" are moot "with respect to periods on or after August 1, 1997. Annexed as Exhibit N is a copy of that letter signed by the Commissioner of the Department of Finance to your affirmant.

8.) In addition, the Deputy Commissioner informed the New York City Police Department (specifically the Chief of the Borough Patrol for Queens South which includes the precinct which is responsible for the tickets in question) that

the Commissioner had rendered the two sections of law moot now that the COAD tax has been repealed. See Exhibit N.

9.) Obviously, for the reasons set forth above and the annexed exhibits, the two summons having to do with COAD tax records and stamps should be dismissed because there is no mechanism for the taxpayer to comply now that the tax on amusement devices has been repealed.

**ABC §106 Disorderly Conduct**

10.) Under Docket No. 2006 SQ 039689, the defendant is charged with violating §106 Subdivision 6 of the New York State Alcoholic Beverage Control Law, which prohibits any “person licensed to sell alcohol beverages ... on the licensed premises” to “suffer or permit such premises to become disorderly.” See Summons #428016554-3. Annexed as Exhibit O is a copy of the New York State law quoted with explanation and commentary of said law.

11.) The alleged violation of §106.6 of the Alcoholic Beverage Control Law (disorderly premises) occurred on March 18, 2006. The complaint must be dismissed because the summons does not meet the definition of disorderly conduct as interpreted by the Courts, to wit:

A. Nowhere in the complaint or description of the offense is there any indication that the location was a “licensed liquor establishment” or the “person licensed to sell alcoholic beverages” did anything to “suffer or permit” the licensed premises to become disorderly.

- B. There is nothing to indicate that the incident is not an isolated event or the Maracas Bay (the name of the location) disturbed public order.
- C. There is no connection of the defendant to the alleged disorderly conduct at the location in the Criminal Court Information, assuming alcoholic beverages were present at the location.
- D. There is no indication that the licensee and/or his agents or employees failed in their duty to call police regarding the alleged disturbances or failed to anticipate disturbances that necessitated police intervention.
- E. There is no indication on the description of the offenses that the licensee allowed any disorderly conduct to be prolonged or that the events were somehow related to other disorderly events.

12.) Case law supports defendant's contentions listed above that none of the three complaints falls under §106.6. In MAL Restaurant v. N.Y. State Liquor Authority, 425 N.Y.S. 2d 583 at Page 585, the Supreme Court, Appellate Division, First Department said "... it is well settled that a finding that the management 'suffered or permitted' the premises to become disorderly, cannot be supported by a showing of a single isolated occurrence. (See Mtr. of Playboy Club, *supra*; Matter of Migliaccio v. O'Connell, 307 N.Y. 566, 569, 122 N.E. 2d 914, 915)."

13.) Judge Ellen M. Coin of Criminal Court, City of New York, New York County, in People v. Serro, 683 N.Y.S. 2d 818 (N.Y. City Crim. Ct. 1998) also supports defendant's contention by saying,

*Case law has interpreted ABC law § 106(6) as requiring evidence that the licensee knew or should have known of the disorderly condition of the premises and tolerated its existence. Beer Garden, Inc. v. State Liquor Authority, 79 N.Y. 2d 266, 275, 582 N.Y.S. 2d 65. Thus, the Courts have held that there was no violation where the events leading to the disorderly condition were unexpected and of such brief duration that the licensee could not have prevented them through reasonable supervision. Moon Walker's Restaurant Corp. v. New York State Liquor Authority, 250 A.D. 2d 428 (1st Dept. 1998).*

14.) The New York State Court of Appeals has offered its opinion regarding the need for "awareness" to sustain a charge of disorderly conduct. In Beer Garden, Inc. v. N.Y.S. Liquor Authority, 582 N.Y. 2d 65 at Page 68 (Court of Appeals 1992), the Court said, "... the SLA cannot take refuge in general rule - making authority as a means of circumventing the specific legislative requirement in Alcoholic Beverage Control Law §106(6) of the Licensee's awareness of the disorderly conduct." Nowhere in the complaint or description of the complaint is there any awareness listed and described by the Police Officer against the licensee or its agents or employees.

15.) The Supreme Court, Appellate Division, Second Department also supports the above referenced position. In L.B.R. Enterprises v. N.Y. State Liquor Authority, 413 N.Y.S. 2d Dept. 36, at Page 38, the Court said, "It is true that, 'where the licensee's agent is instrumental in creating the disorder, it is generally not necessary to establish a foreseeable pattern of conduct (Matter of Club 95 v.



N.Y. State Liquor Authority, 23 N.Y. 2d 784 (addt'l citations omitted) but,

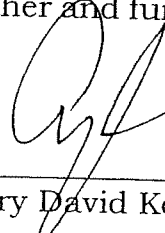
*Conversely however, there is no basis in law for holding a licensee responsible for a single isolated act by its employee, an act which manifestly occurred on the spur of the moment. Conduct is not 'suffered or permitted' unless "the licensee or his manager knew or should have known" of the asserted disorderly condition on the premises and tolerated its existence" (Matter of Playboy Club of N.Y. v. State Liq. Auth. Of State of N.Y., 23 N.Y. 2d 544, 550, 297, N.Y.s. 2d 926, 930, 245 N.E. 2d 697, 700.*

16.) Annexed as Exhibit P are recent decisions of summonses dismissed for facial insufficiency: People v. 229 Restaurant, Inc., Criminal Court, New York County, New York Law Journal, April 5, 2003, Page 19, Column 4, decision from Judge Gene Lopez dated December 4, 2003, and a decision by Judge Stephen A. Knopf, dated December 15, 2004, and a decision by Judge William Harrington, dated May 5, 2005.

17.) This affirmation is made in support of defendant's motion for an Order pursuant to §170.30(1)(a) of the Criminal Procedure Law dismissing the complaints/informations upon the ground that the said accusatory instruments are defective within the meaning of §170.35(1)(a) of the Criminal Procedure Law and that it is not sufficient on its face pursuant to the requirements of §100.40 of the Criminal Procedure Law and that the defect of said accusatory instruments are not of a kind curable by amendment.

18.) No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, your affirmant respectfully requests that this motion be granted in all respects and that the complaints/informations against the defendant be dismissed, together with such other and further relief as this Court seems just and proper.



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Cary David Kessler, Esq.

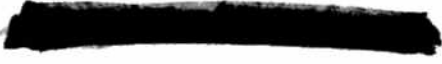
Affirmed this 18<sup>th</sup> day of May, 2006 at Jericho, New York.  
26116Affirmation

# Exhibit F

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: AP-5

-----X  
THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

 :  
Defendant. :

DECISION AND ORDER

Docket Nos. 2009SQ030419  
2009SQ030420  
2009SQ030422

-----X  
JOSEPH ZAYAS, J.:

On February 21, 2009, the defendant was served with three summonses charging her with the following enumerated offenses: (1) Allowing Consp After Hours; (2) Unlicensed Billiards; and (3) Coin Operated Amusement Device - No Tax Stamp. On April 29, 2009, the defendant entered a plea of guilty to Disorderly Conduct, in violation of Penal Law § 240.20, on Docket Number 2009SQ030422 and was sentenced to a Conditional Discharge. An Adjournment in Contemplation of Dismissal, pursuant to CPL 170.55, was granted with respect to the remaining two dockets, 2009SQ030419 and 2009SQ030420.

The defendant in an omnibus motion seeks: (1) An order vacating said judgment and setting aside the conviction on Docket Number 2009SQ030422, as well as vacating the ACDs entered on Dockets 2009SQ030419 and 2009SQ030420, and dismissing each of the three said Complaint/Informations as defective or, in the alternative, permitting the defendant to defend herself on the merits; and (2) Reservation of Rights.

The Court has read the defendant's moving papers and has reviewed the court file and finds as follows:

DISMISSAL OF THE COMPLAINTS/INFORMATIONS

The defendant initially argues that she was originally represented by another counsel who worked out her plea deal as outlined above. She subsequently retained current counsel and was informed that the City of New York has repealed the tax on coin operated amusement devices. In so far as the underlying offense had been repealed, the Court will vacate the judgment entered, as well as the ACDs and address the facial sufficiency of each of the Complaint/Informations individually.

The defendant moves for dismissal of the information as defective (CPL 170.30 [1] [a]; 170.35 [1] [a]). A legally sufficient information must contain non-hearsay allegations of fact establishing, if true, every element of the offense charged and the defendant's commission

thereof. The allegations of the factual part of an information, together with those of any supporting depositions which may accompany it, must provide reasonable cause to believe that the defendant committed the offense charged (see CPL §§ 100.40 and 70.10 [2]; *People v. Casey*, 95 N.Y.2d 354, 361-362 [2000]; *People v. Inserra*, 4 NY3d 30 [2004]). An information which fails to satisfy these requirements is jurisdictionally defective (see CPL §§ 100.40 (1); 100.15 (3); *People v. Alejandro*, 70 NY2d 133 [1987]; *People v. Dumas*, 68 NY2d 729, [1986]).

The three summonses issued on February 21, 2009 allege, respectively, violations of Alcoholic Beverage Control Law (ABC Law) § 105 (5); Administrative Code (AC) § 20-215 (a); and Administrative Code (AC) § 11-4013. Said statutes and factual allegations read as follows:

**ABC Law § 105 Provisions governing licensees to sell at retail for consumption off the premises**

5. No retail *licensee* of liquor and/or wine for *off-premises consumption* shall keep upon the licensed premises any liquors and/or wines in any cask, barrel, keg, hogshead or other container, except in the original sealed package, as received from the manufacturer or wholesaler. Such containers shall have fixed thereto such labels as may be required by the rules of the liquor authority, together with all necessary federal revenue and New York state excise tax stamps, as required by law. Such containers shall not be opened nor its contents consumed on the premises where sold, except for the purpose of wine tasting or sampling by any person pursuant to authorization to conduct such a sampling or tasting pursuant to subdivision seventy-six of this chapter except those to whom sales are prohibited in section sixty-five of this chapter.

The factual allegations contained in summons one reads as follows:

At T/P/O deft was person in charge of above bar & allowed consp of alcohol after 0430 hrs.

Initially, the Court notes that the officer apparently charged the defendant under an inappropriate statute since the factual allegations clearly fail to establish a violation under ABC § 105 (5). "Allowing consp (*sic*) after hours" should properly have been charged under ABC § 106 (5), which provides, in pertinent part, as follows:

**ABC Law § 106 Provisions governing licensees to sell at retail for consumption on the premises**

5. No alcoholic beverages shall be sold, offered for sale or given away upon any premises licensed to sell alcoholic beverages at retail for on-premises consumption, during the following hours:

(a) Sunday, from four ante meridiem to twelve noon.

(b) On any other day between four ante meridiem and eight ante meridiem.

Nor shall any person be permitted to consume any alcoholic beverages upon any such premises later than one-half hour after the start of the prohibited hours of sale provided for in this section.

The Court finds that the summons is defective inasmuch as it charges the wrong provision of law. The Court further finds that even assuming that the correct provision was charged, the above stated factual allegations are wholly conclusory in nature. Initially, they fail to establish the necessary element that the premise was licensed to sell alcoholic beverages at retail for on-premise consumption. Additionally, they do not contain any facts establishing that the defendant "was person in charge of above bar," (see *People v Saito*, 149 Misc 2d 342 [Crim Ct, New York County 1990]; *People v Riverdale Equities, Ltd.*, 148 Misc 2d 816 [Crim Ct, Bronx County 1990]; *People v Penn Central Transportation Co., Inc.*, 95 Misc 2d 748 [Crim Ct, Kings County 1978]), how she allowed consumption of "alcohol," how the officer established that it was "alcohol" being consumed and by whom it was being consumed. Accordingly, the motion to dismiss Docket Number 2009SQ030419 must be granted.

#### AC § 20-215 Licenses; general provisions.

a. It shall be unlawful for any person to maintain, operate, conduct or engage in the business of conducting and maintaining a billiard or pocket billiard room or place unless the premises are licensed by the commissioner in the manner prescribed herein.

b. A membership corporation, club, association or society in whose premises billiards or pocket billiards are played or in whose premises billiard or pocket billiard tables are maintained which are available or held out as being available to persons for the playing of billiards or pocket billiards, shall be deemed to be conducting a billiard or pocket billiard room.

The factual allegations contained in summons two reads as follows:

A/T/D/O Deft acting as Manager allowed billiards table to be used without a billiards license.

The Court notes that AC § 20-216 (1) defines a "Billiard and pocket billiard room" as any room or place in the city in which billiards or pocket billiards are played, and which includes *three or more billiard or pocket billiard tables*, which are available or held out to persons as being available, for the purpose of playing billiards or pocket billiards.

The Court finds that the above stated factual allegations clearly fail to establish that there were three or more billiards or pocket billiards tables in the subject premise. This is a necessary element to establish that the defendant was operating a billiard or pocket billiards room without the premises being licensed. Additionally, there are no factual allegations which support or tend to support the element that the defendant herein did "maintain, operate, conduct or engage in the business of conducting and maintaining a billiard or pocket billiard room." Accordingly, the motion to dismiss Docket Number 2009SQ030420 must be granted.

**AC § 11-4013 Tax on coin-operated amusement devices.**

Any person required, pursuant to the provisions of chapter fifteen of this title, to place or keep the stamp or other indicia denoting payment of the tax imposed by such title conspicuously posted on any device taxable under such chapter, who willfully fails to place or keep such stamp or other indicia conspicuously posted on any such device, shall be guilty of a misdemeanor.

The factual allegations contained in summons three reads as follows:

A/T/P/O Deft being acting manager of bar did allow coin operated machines to be used without NYS Tax Stamp.

The Court notes that AC § 11-1502, which formerly imposed the tax on coin operated amusement devices, was repealed as of August 1, 1997 (see AC § 11-1502 [f]: "Notwithstanding any provision of law to the contrary, no tax shall be imposed pursuant to this chapter for any tax year beginning on or after August first, nineteen hundred ninety-seven."). Accordingly, as said tax is no longer applicable, the motion to dismiss Docket Number 2009SQ030422 must be granted.

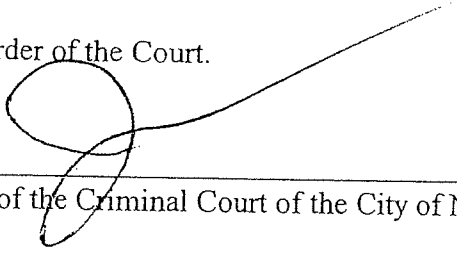
In conclusion, the Court has vacated the defendant's guilty plea to Penal Law § 240.20, Disorderly Conduct and finds that each of the three summonses, as issued, were facially defective and have been dismissed. The fine in the amount of \$120, previously paid by the defendant, should therefore, be refunded.

RESERVATION OF RIGHTS

The branch of the defendant's motion seeking the right to make further motions is granted to the extent indicated in CPL 255.20.

This opinion constitutes the decision and order of the Court.

Dated: June 19, 2009  
Kew Gardens, New York

  
\_\_\_\_\_/ZAYAS  
Judge of the Criminal Court of the City of New York

# Exhibit G



FARLEY & KESSLER, P.C.

ATTORNEYS AT LAW

410 JERICO TURNPIKE, SUITE 315  
JERICO, NEW YORK 11753-1318

TEL: (516) 433-4220

FAX: (516) 939-9839

COUNSEL

LAWRENCE W. CREGAN  
STEVEN M. SCHAPIRO  
PERRY S. REICH  
BEVERLY DAVID SILVER  
SCOTT DESIMONE

RICHARD L. FARLEY  
CARY DAVID KESSLER\*

\* ADMITTED IN NY, CONN. AND WASH. D.C.

October 24, 2001

By Hand

Hon. Andrew S. Eristoff  
Commissioner of Finance, City of New York  
One Centre Street  
Municipal Building, Room 500  
New York, New York 10007

Re: Chapter 15 - New York City Administrative Code  
Tax on Coin Operated Amusement Devices  
Our File No. 21-108

Dear Commissioner Eristoff:

In 1997, Mayor Guiliani signed into law legislation which repealed the tax on coin operated amusement devices. As counsel to A.M.O.A.-N.Y. (Amusement Music Owners Association of New York) I thought that would be the end of summonses issued by the police regarding this tax. However, much to my surprise, we are still receiving tickets pursuant to §11-1504 which mandates that records be kept regarding the old tax on coin operated amusement devices and §11-1502 which mandates tax stamps for amusement devices.

It is logical to me that since the tax was repealed in 1997 that there would be no reason for tax records to be kept or stamps to be placed on machines. However, some Judges in the Criminal Courts in New York City are not accepting my argument.

At the suggestion of Deputy Commissioner Peter Lempin, I am recommending that the Finance Department request that the City Council repeal §11-1504, §11-1505, §11-1506, §11-1507, and §11-1508. It is most unfortunate that I have had to file motions in Court to request dismissal of tickets being written by members of the police department for violations of these laws. I know that it is not the intention of the Department to keep tax records or issue tax stamps.

I thank you for considering the above recommendations.

Very truly yours,

FARLEY & KESSLER, P.C.

Cary David Kessler

*MISSING*  
11-4013

CDK:dms

CC: Hon. Peter Lempin, Deputy Commissioner  
Robert Herman, Pres. A.M.O.A.-N.Y.

21108EISTOFF.LTR



NOV 16 2001

FINANCE  
NEW • YORK  
THE CITY OF NEW YORK  
DEPARTMENT OF FINANCE

ANDREW S. ERISTOFF  
COMMISSIONER

November 5, 2001

Farley & Kessler, PC  
410 Jericho Turnpike  
Jericho, NY 11753-1318  
ATTN: Carey David Kessler, Esq.

Re: Tax on Coin Operated Amusement Devices (COAD)  
Chapter 15 – NYC Administrative Code

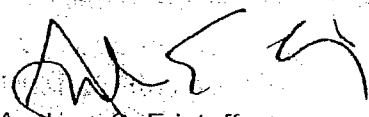
Dear Mr. Kessler:

I am writing in response to your letter of October 24, 2001 regarding the ongoing issuance of summonses to members of A.M.A.O.-N.Y. (Amusement Music Owners Association of New York) for failure to display a COAD tax stamp or maintain COAD records by NYC police officers.

On June 23, 1997, Local Law 48 was signed into law, which repealed the COAD tax effective with the periods beginning on or after August 1, 1997. As a result of that legislation, the Department of Finance no longer requires the filing or payment of a COAD tax return, nor issues COAD tax stamps. Local Law 48 effectively rendered those sections of Chapter 15 of the Administrative Code that require the posting of a tax stamp and the maintenance of COAD records moot with respect to periods on or after August 1, 1997. I will confer with the Office of the Corporation Counsel to determine if it is necessary for the Department of Finance to request that the City Council repeal §11-1504 through 11-1508. In the interim, I have notified the NYPD of the issues you have raised concerning summons issuance for these type violations. Please feel free to share the content of this letter with your A.M.A.O.-N.Y. membership. It may prove helpful in future interaction with the NYPD or the Courts.

Thank you for calling this matter to my attention. I trust that this letter accurately conveys the Department's position with respect to the COAD tax and will be of some help to your membership.

Sincerely,



Andrew S. Eristoff  
COMMISSIONER



FINANCE  
NEW • YORK  
THE CITY OF NEW YORK  
DEPARTMENT OF FINANCE

November 14, 2001

New York City Police Department  
Borough Patrol Queen South  
71-01 Parsons Boulevard  
Flushing, NY 11365  
ATTN: Thomas P. Lawless, Chief

Re: Coin Operated Amusement Device Tax (COAD)  
Administrative Code – Chapter 15

Dear Chief Lawless,

The New York City Department of Finance was recently contacted by Cary David Kessler, General Counsel to AMAO-NY (Amusement Machine Owners Association of New York) concerning the issuance of summonses by NYPD officers for failure to display a COAD tax stamp or maintain COAD records.

Enclosed please find Mr. Kessler's letter and Commissioner Andrew S. Eristoff's response, which is self-explanatory. I am calling this matter to your attention at the request of Mr. Kessler because the summonses at issue were issued by the 101<sup>st</sup>, 103<sup>rd</sup>, and 106<sup>th</sup> precincts, which are under your jurisdiction.

Your attention to this matter is appreciated. If you have further questions or concerns, please contact my Executive Assistant, Howard Reiss at (718) 935-6004.

Sincerely,

Leslie Zimmerman

LZ/eg  
Attachments

c: Howard Reiss

**FARLEY & KESSLER, P.C.**

ATTORNEYS AT LAW

410 JERICHO TURNPIKE, SUITE 315

JERICHO, NEW YORK 11753-1318

TEL: (516) 433-4220

FAX: (516) 939-9839

RICHARD L. FARLEY  
CARY DAVID KESSLER\*

\* ADMITTED IN NY, CONN. AND WASH., D.C.

COUNSEL  
BEVERLY DAVID SILVER

July 21, 2004

By Hand

Hon. Martha E. Stark  
Commissioner of Finance  
City of New York  
Office of the Commissioner  
1 Center Street, Suite 500  
New York, New York 10007

NYC DEPT. OF FINANCE  
2004 JUL 21 P 3:12  
OFFICE OF THE  
COMMISSIONER

Re: Tax on Coin Operated Amusement Devices (COAD)  
Chapter 15-NYC Administrative Code  
Our File No. 24-108(D)

Dear Commissioner Stark:

On June 23, 1997, Local Law 48 was signed by Mayor Rudolph Guilliani repealing the COAD tax after August 1, 1997.

Unfortunately, other sections of Chapter 15 referencing the COAD tax (§11-1502) were not repealed.

Since that time, the New York City Police Department continues to issue summonses to our clients at various locations within the City of New York for failure to display COAD tax stamps or maintaining COAD records. We have written many letters to the New York Police Department's Legal Bureau but, unfortunately, six years after the repeal of COAD, Officers are still writing tickets.

For example, please find enclosed two summonses issued this year having to do with record keeping and the placement of stamps for a tax that has not been in existence for over six years!

When I first raised this problem in 2001, Commissioner Eristoff was kind enough to write a letter to me and instructed his staff to write to the Police Department in Queens on the same subject. (See enclosed.) Unfortunately, the summonses are still being written.

Therefore, I think the time has come to request that the remaining sections of the Administrative Code, Chapter 15 that reference COAD be repealed. (§11-1504 through 11-1508); §11-4013.

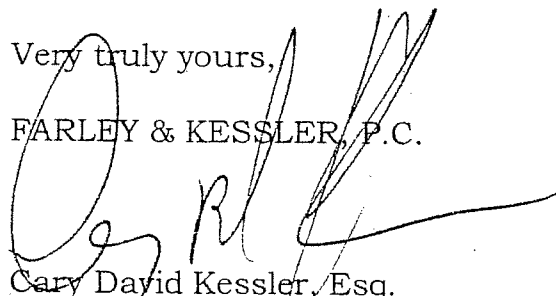
I appreciate that it is time consuming to request such changes from the Council. However, the volume of summonses being issued leaves this office no recourse but to file Notices of Claim against the City on behalf of defendants who are forced to go to Court and request dismissal of their summonses based on a repealed statute. In effect, we will be saving the City money when the Administrative Code referencing COAD is completely expunged from the law books. If the Department will recommend such legislation to the City Council, this office, as counsel to A.M.O.A.-N.Y. (Amusement and Music Owners Association of New York) will certainly write to the appropriate city council officials advising them of the urgent need to act on this legislation.

Thank you for considering this request.

If a meeting is necessary with you or your staff, we stand ready to be of assistance to the Department.

Very truly yours,

FARLEY & KESSLER, P.C.

  
Cary David Kessler, Esq.

CDK:dms

CC: Frank Calland; President AMOA-NY  
Phil DeDona; Member Board of Directors AMOA-NY  
Robert Herman; Member Board of Directors AMOA-NY

24108(D)Stark.ltr



FINANCE  
NEW YORK  
MARTHA E. STARK  
COMMISSIONER

09 22 2004

September 22, 2004

Cary David Kessler, Esq.  
Farley & Kessler, P.C.  
410 Jericho Turnpike, Suite 315  
Jericho, NY 11753-1318

**Re: Tax on Coin Operated Amusement Device (COAD) Tax  
Chapter 15 – NYC Administrative Code**

Dear Mr. Kessler

This is in response to your letter to Commissioner Stark regarding the above-referenced matter. I understand that you are concerned about certain remaining COAD tax provisions in the Administrative Code. As you have indicated, your clients are continuing to receive summonses. To address this concern, we have referred this matter to the NYC Police Department for their review. In addition, we will review and consider your recommendation with respect to possible legislative change. I regret any inconvenience this has caused your clients.

Thank you for bringing this matter to our attention. If you have any further questions or concerns, you may contact me at (212) 669-4876.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dara Jaffee".

Dara Jaffee  
Special Counsel to the Commissioner  
New York City Department of Finance

Cc: Martha E. Stark, Commissioner  
Leslie Zimmerman, Assistant Commissioner, Payment Operations

# Exhibit H

# City Missed Inspecting 1 of Every 5 Restaurants

By SIMON AKAM

The city's health department failed to inspect one in every five restaurants during the 2008 fiscal year, according to an audit issued by the city comptroller's office on Monday. Inspectors are supposed to make unannounced annual visits to the city's restaurants. But 22 percent of the restaurants slipped through the cracks that fiscal year, the audit found.

"The Health Department is charged with protecting the health and well-being of New Yorkers, but, unfortunately, its internal controls for ensuring that health code violations at restaurants are corrected in a timely manner were found to be flawed," the comptroller, William C. Thompson Jr., said in a statement.

The Bureau of Food Safety and Community Sanitation, part of the Department of Health and Mental Hygiene, is responsible for inspecting food-service establishments, which include mobile units and cafeterias at schools and senior centers as well as restaurants.

If violations are found during a review, inspectors are supposed to return in 14 to 45 days to determine whether the violations have been corrected.

According to documents provided by the comptroller's office, 5,838 restaurants failed at least one sanitary inspection during the 2008 fiscal year.

The audit, reported in The Daily News on Monday, investigated a sample of 62 restaurants that failed inspections. In all but two cases, inspectors made follow-up visits, but 20 percent of them were reinspected more than 45 days after the initial inspection.

"It is important to ensure that compliance inspections are performed timely," Mr. Thompson said. "Otherwise the danger that food-borne illness could occur as a result of unsanitary conditions being allowed to continue is increased."

He added, "It may be necessary for the Department of Health and Mental Hygiene to make modifications to ensure that inspections are performed in a uniform manner."

The health department acknowledged that it had failed to reach its target during the 2008 fiscal year. According to the department's figures, inspectors examined 80.1 percent of food service establishments in that period.

However, the department said that in each fiscal year from 2004 to 2007, it inspected about 99 percent of food-service establishments, and that it had returned to that level in the 2009 fiscal year.

A spokeswoman for the department said the 2008 dip was a result of the need to make more follow-up visits.

The health department questioned the comptroller's assertion that only 80 percent of compliance inspections occurred within the 14-to-45-day time frame.

The department's own analysis from the 2008 fiscal year found that 95.7 percent occurred within the required period.

A statement released by the department suggested that the discrepancy between the comptroller's findings and their own was due to the small size of the audit's sample.

Marion Nestle, a professor in the Department of Nutrition, Food Studies and Public Health at New York University, said food inspections play a crucial deterrent role, forcing restaurant owners to maintain high standards.

However, she suggested that not all of the criteria by which establishments are judged are equally significant.

"Cooking food to proper temperature and storing food to proper temperature are important food-safety matters," she said. "Other things seem less important, like whether you stack forks with the fork part up or down."

Beginning next July, all restaurants in New York will be required to post a sanitary grade in their windows, a measure already adopted elsewhere. Professor Nestle supports such public ratings.

"Places like Los Angeles that give grades have a lot more clout," she said. "You go to a B place, you better eat your food hot."



# 22% of city restaurants go uninspected, controller sez

**EXCLUSIVE**

**BY CELEST KATZ**  
DAILY NEWS CITY HALL BUREAU

YOU WANT flies with that?

It's a scary possibility, according to a new audit of city restaurant inspections.

"In one instance, a restaurant was allowed to remain open even after four failed inspections — two of which detected mice," city Controller William Thompson said.

During fiscal year 2008, the city Health Department failed to inspect one in five restaurants and was slow to recheck those with violations, according to Thompson's audit.

About 22% of city restaurants were never inspected during fiscal year 2008 even though the Health Department's own Bureau of Food Safety requires annual reviews, Thompson found.

During that time, more than

5,800 restaurants failed at least one inspection. Of those that flunked, 20% weren't reinspected within the required 45 days.

There were 678 city restaurants that failed three or more consecutive sanitary inspections in 2008, the report found. Of these, Thompson took a sample of 39 eateries and found about half were allowed to remain open — with no explanation.

Health officials rejected the audit's findings and questioned some of the auditing techniques.

They said they shutter restaurants that pose a risk, but work with others to fix problems and improve cleanliness. Thompson's auditors "wrongly assume that closure rates are the sole measure of the program's effectiveness," health officials said.

Sanitary inspections have climbed back up to 99% in fiscal year 2009 — the same levels they were at between 2004 and 2007.

ckatz@nydailynews.com

# OUT OF THE MONEY

## OTB saddles up for possible bankruptcy

**EXCLUSIVE**

By DAVID SEIFMAN  
City Hall Bureau Chief

Saddled with debts of \$46 million and facing mounting losses each day, the beleaguered Off-Track Betting Corp. is considering the unthinkable — bankruptcy. The Post has learned.

Sources said that was one of the options discussed in a hastily called meeting of OTB's board of directors on Tuesday.

"It's sort of a logical thing to look at when you're paying out more than you take in," said one source. "It's an orderly way to come to some sort of resolution."

OTB's finances have become increasingly dire since Mayor Bloomberg — in what now appears to be a prescient move — turned over the money-losing operation to the state in June 2008 before the cash ran out. OTB officials have been desperately juggling payments to keep the city's

only legal bookie afloat through the summer. "Right now they're robbing Peter to pay Paul," said one official.

The agency owes more than \$46 million to racetracks and other creditors, including Monticello Raceway, which has its own money problems and has filed a lawsuit to collect about \$5 million. As The Post reported on Sunday, OTB is operating with a negative cash flow of \$600,000 to \$800,000 a month on a betting handle of \$900 million a year.

largely because of a revenue-sharing formula dictated by Albany that forces it to pay out more than it takes in after operating expenses.

Some insiders questioned whether the bankruptcy threat was a ploy to induce the Legislature to address OTB's woes. But Lenny Allen, president of Local 2021 of District Council 37, which represents more than 1,100 OTB workers, said: "It's no scare tactic. It's real. They're bleeding." A source said that even though OTB is a public-benefit corporation created by the state, there are "very limited circumstances" under which it might seek bankruptcy protection while continuing the betting operation. The fallout could have far-reaching consequences for OTB's creditors and its unionized work force. Perhaps most troubling to the workers and OTB retirees is that their future medical benefits, worth an estimated \$200 million, could be wiped out.

david.seifman@nypost.com