

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
GLENN E. DUNDON	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1976	:	
through September 9, 1981.	:	

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Petitioner, Glenn E. Dundon, 111 Brown Boulevard, Brownville, New York 13615, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1976 through September 9, 1981 (File No. 48617).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 207 Genesee Street, Utica, New York, on April 1, 1986 at 11:00 A.M. Petitioner appeared by Swartz, Evans, Taylor & Dickinson, P.C. (H. Thomas Swartz, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether petitioner was liable for sales tax attributable to the previous owners of a business purchased by him.

FINDINGS OF FACT

1. On January 5, 1982 the Audit Division issued the following notices of determination and demands for payment of sales and use taxes due to petitioner, Glenn E. Dundon:

- (a) For the period March 1, 1976 through May 31, 1980, \$2,264.19 in tax and \$611.03 in penalty, plus interest.

- (b) For the period June 1, 1980 through September 9, 1981, total tax due of \$1,309.50, penalty of \$159.71, plus interest.

2. The assessments were based on petitioner's liability under section 1141(c) of the Tax Law as purchaser of a tavern business known as "Tale's End", Brownville, New York, from Arthur I. Gagnon and Emma Z. Gagnon.

3. After petitioner's timely protest of the assessments, the Audit Division secured the sellers' records and examined them for the period March 1, 1979 through November 30, 1981, the period during which the sellers operated the business. As a result of this audit, notices of assessment review were issued to petitioner on October 25, 1982. These notices provided as follows:

- (a) The tax due for the period March 1, 1976 through May 31, 1980 previously stated as \$2,264.19, plus penalty and interest was reduced to \$1,039.85, plus adjusted penalty and interest.
- (b) The tax due for the period June 1, 1980 through September 9, 1981 of \$1,309.50, plus penalty and interest, was reduced to \$1,298.41, plus adjusted penalty and interest.

4. The Auditor found that the sellers reported a valuation of \$1,511.00 on furniture, fixtures and equipment, while depreciation schedules indicated a value of \$5,000.00. Tax on additional taxable use of \$3,489.00 appears to have been included in the revised assessment. Petitioner, however, had paid \$350.00 in tax with his first quarterly return in payment of tax based on the \$5,000.00 valuation.

5. Petitioner does not contest sellers' liability for taxes.

#### CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law provides, in pertinent part:

"(c) whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of such sale, transfer or assignment, or paying therefor, notify the tax commission by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee that he owes any tax pursuant to this article, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

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For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the state of any such taxes theretofore or thereafter determined to be due to the state from the seller, transferrer, or assignor, except that the liability of the purchaser, transferee or assignee shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, transferred or assigned to such purchaser, transferee or assignee, whichever is higher, and such liability may be assessed and enforced in the same manner as the liability for tax under this article...."

B. That since it has not been shown that the bulk sale notice under section 1141(c) of the Tax Law was given, petitioner is personally liable for all sales taxes due from and owing by the sellers, Emma Z. and Arthur I. Gagnon. As petitioner paid tax on the \$5,000.00 in tangible personal property acquired, the tax based thereon (\$350.00) should be deducted from the assessments.

C. That except for the credit for tax paid on tangible personal property (Conclusion of Law "B"), the notices of determination and demands for payment of sales and use taxes due, issued January 5, 1982, as modified by the Notice of Assessment

Review dated October 25, 1982, are sustained and the petition is otherwise denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986

Roderich A. Chen  
PRESIDENT

Francis R. Kolomyj  
COMMISSIONER

Mark J. Friedlander  
COMMISSIONER