

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM C. FOLEY, d/b/a FOLEYS

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year~~ Period August 1, 1965
through December 31, 1966.

State of New York
County of Albany

Janet Mack, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of December, 1974, she served the within Notice of ~~Decision~~ (Determination) by ~~(certified)~~ mail upon William C. Foley, d/b/a Foleys ~~(representative of the)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. William C. Foley,
d/b/a Foleys
809 Valley Drive
Syracuse, New York
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

(23rd day of December, 1974

Martha L. Lunn

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM C. FOLEY, d/b/a FOLEYS

For a Redetermination of a Deficiency or
a Refund of ~~Sales & Use~~ Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~XXXXX~~ Period August 1, 1965
through December 31, 1966.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

State of New York
County of Albany

Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of December , 19 74, she served the within
Notice of ~~XXXXXXX~~ Determination) by ~~(certified)~~ mail upon John P. Kinney, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John P. Kinney, Esq.
Langan, Grossman, Kinney & Dwyer
100 Madison Street
Syracuse, New York
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

23rd day of December , 19 74

Martha Luzzaro

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
December 23, 1974

Mr. William C. Foley
d/b/a Foleys
809 Valley Drive
Syracuse, New York

Dear Mr. Foley:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WILLIAM C. FOLEY, d/b/a FOLEYS	:	DETERMINATION
for a Revision of a Determination or	:	
for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax	:	
Law for the Period August 1, 1965	:	
through December 31, 1966.	:	

William C. Foley, d/b/a Foleys, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through December 31, 1966.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on March 31, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by John P. Kinney, Esq., and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

The taxpayer, having failed to file a notice of impending sale under section 1141(c) of the Tax Law relating to bulk sales, what was the amount of liability of the purchaser for assessments made against the seller?

FINDINGS OF FACT

1. The taxpayer, William C. Foley, purchased a business from Hiram C. Agan, Jr., who filed no sales tax returns for the period income.

2. A Notice of Determination of deficiencies in sales tax for the period in issue was issued on July 10, 1969, against the taxpayer under Notice No. 90500681.

3. The taxpayer petitioned for a revision of the determination of the deficiencies in sales tax.

4. Hiram C. Agan, Jr. filed no sales tax returns from March 1, 1966, until he sold his business to William C. Foley in late 1966.

5. William C. Foley, after purchasing the business from Hiram C. Agan, Jr., filed current sales tax returns with payments for the year 1967.

6. The Sales Tax Bureau assessed William C. Foley as a bulk sale purchaser of Hiram C. Agan, Jr. for his unpaid sale taxes of 1966.

7. The Sales Tax Bureau assessments for 1966 are on a projection of estimated sales based on Mr. Agan's prior returns.

8. However, Mr. Agan's business and health went down during 1966 and he was forced to sell the business and had left the state in financial straits. The business sales were less in 1966 than in the prior year.

9. Taxable sales for the year 1966 in the following months are found to be:

May	\$2,000
June	2,000
July	2,000
August	2,000
September	1,700
October	1,400
November	1,300
December	2,400

CONCLUSIONS OF LAW

A. William C. Foley is liable as a bulk sale purchaser of Mr. Hiram C. Agan, Jr.

B. The sales tax shall be recomputed on the basis of the taxable sales for 1966.


C. Mr. Foley acted in good faith and penalties are cancelled.

D. Pursuant to the Tax Law, interest shall be due on the recomputed tax due until paid.

DATED: Albany, New York

December 23, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER