

STATE OF NEW YORK  
STATE TAX COMMISSION

<u>Application</u>	
In the Matter of the <del>Petition</del>	:
of	:
THOMAS & PAUL CORP.	:
t/a BLUE SEA RESTAURANT	:
For a Redetermination of a Deficiency or	:
a Refund of Sales & Use	:
Taxes under Article(s) 28 & 29 of the	:
Tax Law for the <del>Year(s)</del> Periods August 1, 1965	:
through May 31, 1968	:

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

State of New York  
County of Albany

Martha Funaro , 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 16th day of February , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon Thomas & Paul Corp., t/a Blue Sea Restaurant (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas & Paul Corp.  
t/a Blue Sea Restaurant  
135 Third Avenue at 14th Street  
New York, New York 10003  
Attention John Calamaras, Pres.

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

16th day of February , 1973.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

Application  
In the Matter of the ~~Refund~~ :  
of :  
THOMAS & PAUL CORP. :  
t/a BLUE SEA RESTAURANT :  
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/s)~~ Periods August 1, 1965 :  
through May 31, 1968

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

State of New York  
County of Albany

Martha Funaro , 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 16th day of February , 19 73, she served the within Notice of Decision (or Determination) by (certified) mail upon David Schachne, C.P.A.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: David Schachne, C.P.A.

663 Fifth Avenue  
New York, 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

16th day of February, 1973

16th day of February, 1973  
Joyce S. Van Patten

Jantha Kumar



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**February 16, 1973**

**Thomas & Paul Corp.  
t/a Blue Sea Restaurant  
135 Third Avenue at 14th Street  
New York, New York 10003  
Attention John Calamaras, Pres.**

**Gentlemen:**

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

Please take further notice that pursuant to **sections 1138 & 1243**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
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 relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

  
**Paul B. Coburn**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

## STATE TAX COMMISSION

Applicant, Thomas & Paul Corp., t/a Blue Sea Restaurant, (hereinafter referred to as "Blue Sea Restaurant") has filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods August 1, 1965 through May 31, 1968. (File No. 90,755,579). A formal hearing was held before Lawrence A. Newman, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 17, 1971, at 2:30 P.M., on February 14, 1972, at 1:35 P.M., and on June 27, 1972, at 9:30 A.M. Applicant appeared by David Schachne, C.P.A. The Sales Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

Was additional sales tax due from applicant, Blue Sea Restaurant, for the periods August 1, 1965 through May 31, 1968?

1. Applicant, Blue Sea Restaurant, filed New York State and local sales and use tax returns for the periods August 1, 1965 through May 31, 1968.

2. On August 9, 1968, as a result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Blue Sea Restaurant, for additional sales tax due for the periods August 1, 1965 through May 31, 1968 in the sum of \$45,631.19 plus penalty and/or interest of \$10,721.27.

3. Applicant, Blue Sea Restaurant, operated a luxury type restaurant and bar at 135 Third Avenue in New York City during the periods August 1, 1965 through May 31, 1968.

4. Applicant, Blue Sea Restaurant's mark up on purchases relating to the sale of liquor was 341.2% during the periods August 1, 1965 through May 31, 1968.

5. Applicant, Blue Sea Restaurant's mark up on purchases relating to the sale of beer was 287% during the periods August 1, 1965 through May 31, 1968.

6. Applicant, Blue Sea Restaurant's mark up on purchases relating to the sale of food was 100% during the periods August 1, 1965 through May 31, 1968.

7. The effective tax rate applicable to applicant, Blue Sea Restaurant's sales of food and beverages was 5.09% during the periods August 1, 1965 through May 31, 1968.

8. Applicant, Blue Sea Restaurant's sales, as determined by applying the aforesaid mark ups to purchases, and sales tax due, as determined by applying the aforesaid effective rate to sales, for the periods August 1, 1965 through May 31, 1968 were as follows:

<u>PERIOD ENDED</u>	<u>AMOUNT OF SALES</u>	<u>SALES TAX DUE</u>
8/31/65	\$ 65,451.04	\$ 3,178.76
11/30/65	188,984.88	9,619.33
2/28/66	187,977.02	9,568.03
5/31/66	207,286.36	10,550.88
8/31/66	204,841.94	10,426.45
11/30/66	190,375.94	9,690.13
2/28/67	197,188.74	10,036.91

<u>PERIOD ENDED</u>	<u>AMOUNT OF SALES</u>	<u>SALES TAX DUE</u>
5/31/67	\$205,551.52	\$10,462.57
8/31/67	188,925.50	9,616.31
11/30/67	171,022.52	8,705.05
2/28/68	197,231.40	10,039.08
5/31/68	205,621.20	10,466.12

9. The amount of additional sales tax due from applicant, Blue Sea Restaurant, after allowing for sales tax paid by it on account of its sales tax liabilities was \$45,631.19 for the periods August 1, 1965 through May 31, 1968.

10. The determination of additional taxable sales and resulting sales tax for the periods August 1, 1965 through May 31, 1968 were based upon substantial findings of fact in the course of a field audit of applicant, Blue Sea Restaurant's books and records. The Sales Tax Bureau, in arriving at its determination, followed generally accepted procedures and adequate tests consistent with the nature of the business operations and available records. Applicant, Blue Sea Restaurant, has failed to submit documentary or other sufficient evidence to disprove the Sales Tax Bureau's determination of taxable sales or the computation of sales tax due.

CONCLUSIONS OF LAW

A. That the examination of applicant, Blue Sea Restaurant's books and records by the Sales Tax Bureau was properly conducted, and the resulting findings as to the amount of additional sales tax due for the periods August 1, 1965 through May 31, 1968, were supported by substantial evidence.

B. That the application of Blue Sea Restaurant is denied  
and the Notice of Determination and Demand issued August 9, 1968  
is sustained.

DATED: Albany, New York  
February 16, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER