

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JOSEPH BEATON & SONS, INC.

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

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Years)~~ period August 1, 1965  
through May 31, 1967.

State of New York  
County of Albany

Rae Zimmerman , 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 6th day of April , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Joseph Beaton  
& Sons, Inc.  
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joseph Beaton & Sons, Inc.  
613 Trenton Road  
Utica, New York  
Attention Mrs. Joseph Beaton, Treasurer  
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

6th day of April , 1972

Martha Furus

Rae Zimmerman



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

STATE TAX COMMISSION

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

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
April 6, 1972

Joseph Beaton & Sons, Inc.  
613 Trenton Road  
Utica, New York

Attention Mrs. Joseph Beaton, Treasurer

Gentlemen:

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

Please take further notice that pursuant to **sections 1138 and 1243** of  
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,

**L. Robert Leisner**

HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
JOSEPH BEATON & SONS, INC.	:	DETERMINATION
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 August 1, 1965, through	:	
May 31, 1967.	:	

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Joseph Beaton & Sons, Inc. applied for a hearing to review a determination of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 1, 1965, through May 31, 1967. A formal hearing was held in the offices of the State Tax Commission at Utica, New York, on November 18, 1970, before L. Robert Leisner. The applicant appeared by Eunice Beaton. The Sales Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was the purchase of an item of Gradall excavation equipment by the taxpayer exclusively for rental or resale and as such exempt from tax?

FINDINGS OF FACT

1. The Sales Tax Bureau issued a Notice of Determination and demand for payment of sales and use tax due under Notice No. 90752618.
2. The Sales Tax Bureau asserted that the purchase of an item of Gradall excavation equipment by the taxpayer was not exclusively for rental or resale. The taxpayer contended that the equipment was used exclusively for rentals. A few minor items were not disputed by the taxpayer.

3. The taxpayer sent the equipment with an operator to do excavation work at the Gateway Motel and many other jobs.

4. Taxpayer's operator was on occasion told to do a job and everyone left the job site, leaving him to accomplish the job as he saw fit.

5. The taxpayer billed for the operator and equipment on an hourly basis.

6. The taxpayer secured demolition and building permits for some jobs.

CONCLUSIONS OF LAW

A. The billing at the Gateway Motel for the Gradall equipment was not on a rental basis.

B. The billing for the Gradall equipment at some of the other places of work was not on a rental basis.

C. The purchase of the item of Gradall excavation equipment was not exclusively for resale or rental and it was subject to sales tax.

D. The application is denied and the determination of the sales tax under Notice No. 90752618 is sustained.

DATED: Albany, New York

*April 6, 1972*

STATE TAX COMMISSION

*Thomas Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Abner H. H. H. H.*  
\_\_\_\_\_  
COMMISSIONER

*Walter H. H.*  
\_\_\_\_\_  
COMMISSIONER