

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FAI, FAI, INC.

D/B/A SAM PAN CHINESE KITCHEN  
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)~~ period Aug. 1; 1965  
through May 31, 1969

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 30th day of March , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Fai, Fai, Inc. d/b/a Sam Pan Chinese Kitchen (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Fai, Fai, Inc.  
d/b/a Sam Pan Chinese Kitchen  
168 East Park Avenue  
Long Beach, 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

30th day of March , 1972

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FAI, FAI, INC.

D B A SAM PAN CHINESE KITCHEN

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 Aug. 1, 1965  
through May 31, 1969

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 30th day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Kremer, Fine &  
Kilgannon (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Kremer, Fine & Kilgannon  
20 West Park Avenue  
Long Beach, New York 11561

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

30th day of March, 1972

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**March 30, 1972**

**Fai, Fai, Inc.  
d/b/a Sam Pan Chinese Kitchen  
168 East Park Avenue  
Long Beach, New York**

**Gentlemen:**

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

Please take further notice that pursuant to **Sections 1243 & 1138**  
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,

  
**Lawrence A. Newman**  
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 :  
FAI FAI, INC. :  
D/B/A SAM PAN CHINESE KITCHEN : 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, 1969. :

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An application was filed on behalf of Fai Fai, Inc. 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, 1969.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on January 12, 1972. The applicant was represented by Kremer, Fine & Kilgannon, Esqs. (Arthur J. Kremer, Esq., of Counsel). The Sales Tax Bureau was represented by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

The appropriate rate of sales taxes applicable to sales of take-out foods in the City of Long Beach, County of Nassau.

FINDINGS OF FACT

1. The applicant, Fai Fai, Inc., filed New York sales and use tax returns for the period August 1, 1965 through May 31, 1969.
2. On September 30, 1969, Mr. Fay H. Thuong, as president of Fai Fai, Inc., signed a consent extending the period for assessment of the periods in issue to December 20, 1970.
3. On February 11, 1970, the Sales Tax Bureau issued a notice of determination numbered 90,741,532 in the amount of \$8,770.49, plus statutory penalties and interest. The notice was based on a

determination that the vendor did not report additional taxable sales and did not remit the proper local sales tax due.

4. On March 17, 1970, the vendor filed an application for revision of the determination or for refund. The applicant questions the propriety and legality of imposing the local sales tax to the sale of "take-out" foods.

5. The applicant operates a retail store under the business name of Sam Pan Chinese Kitchen in the City of Long Beach, in the County of Nassau, State of New York. The principal business activity is the sale of prepared chinese dishes for off-premises consumption. The applicant collected from the customers and remitted to the Sales Tax Bureau the statewide rate of sales tax on his food sales from August 1, 1965 to May 31, 1969.

6. In accordance with Article 29 of the Tax Law, and effective August 1, 1965 through May 31, 1969, a local ordinance was lawfully imposed in and for the City of Long Beach and in the County of Nassau, imposing a local sales tax at the rate of 3%. The local tax, in conformity with Article 28 of the Tax Law, was applicable to retail sales of prepared foods for off-premises consumption.

#### DETERMINATION

A. The effective local sales tax rate for the City of Long Beach in the County of Nassau for the period from August 1, 1965 through May 31, 1969, was 3%, and applicable in addition to the lawful statewide rate, to the sale of prepared food for off-premises consumption.

B. The penalty and interest imposed on the notice of determination is reduced to the equivalent of 6% per annum to date of payment.

C. Except as stated in item(B) above, the notice of determination is sustained and the application for revision is denied.

DATED: Albany, New York  
*March 30, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koehn*  
\_\_\_\_\_  
COMMISSIONER