

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDWARD WILSON and PAUL F. WILSON
Individually and as Co-partners d/b/a
BEAU SEJOUR
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Years(s)~~ or Period(s)
9/1/71 through 9/30/73.

AFFIDAVIT OF MAILING

State of New York
County of Albany

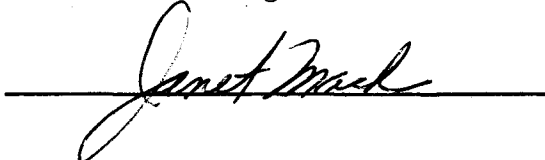
Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of August, 1977, she served the within Notice of Determination by (~~certified~~) mail upon Edward Wilson and Paul F. Wilson (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Edward & Paul F. Wilson
Individually and as Co-partners
d/b/a Beau Sejour
Stewart & Central Avenues
Bethpage, New York 11714
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 Postal Service 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 ~~XXXXX~~ last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

22nd day of August, 1977.


Marsina Donnini


Janet M. [illegible]

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDWARD WILSON and PAUL F. WILSON
Individually and as Co-partners d/b/a
BEAU SEJOUR
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ or Period(s)
9/1/71 through 9/30/73

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini, 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 22nd day of August, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon James N.
Werkhoven, 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: James N. Werkhoven, P.A.
90 Lawrence Avenue
Smithtown, New York 11787

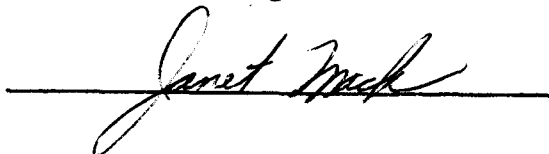
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

22nd day of August, 1977.


Marsina Donnini


Janet M. [illegible]



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 22, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Edward & Paul F. Wilson
Individually and as Co-partners
d/b/a Beau Sejour
Stewart & Central Avenues
Bethpage, New York 11714

GENTLEMEN:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1250** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
EDWARD WILSON and PAUL F. WILSON	:	
Individually and as Co-partners	:	
d/b/a BEAU SEJOUR	:	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 Periods September 1, 1971 through	:	
September 30, 1973.	:	

Applicants, Edward Wilson and Paul F. Wilson, individually and as co-partners, d/b/a Beau Sejour, Stewart and Central Avenues, Bethpage, New York 11714, have 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 September 1, 1971 through September 30, 1973. (File No. 10450). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1977, at 9:15 A.M. Applicants appeared by James N. Werkhoven, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUE

Was additional sales tax, based on a projection of gross receipts by the Sales Tax Bureau, due from applicants, Edward Wilson and Paul F. Wilson, d/b/a Beau Sejour, for the periods September 1, 1971 through September 31, 1973?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Sales Tax Bureau audited applicants' books and records after the restaurant had failed and was closed and did not observe the establishment in operation. The books were in complete order and sales tax returns had been filed and paid when due.

2. The sales tax examiner found the over-all markup on the Federal return to be 83.86% and considered this to be too low. The tax examiner projected the gross receipts based on a previous audit which had been conducted for the periods September 1, 1966 through November 30, 1969 and arrived at the same markup on purchases for the current audit periods as were previously determined: food 175%, wine and liquor 275%, beer 350% and tobacco 50%.

3. Applicants contended that at the previous audit there was no observation of the restaurant in operation by the sales tax auditor. They were forced to agree to the adjustment because they were in desperate need of capital and New York State had a lien on the property which had to be removed by paying the assessment in order to secure capital by borrowing.

4. The establishment was a gourmet restaurant operating out of an old converted home. The food and drink were of the best quality and the servings of all items were oversized. Applicants butchered the meat themselves. The waste factor on all items was

large. The restaurant was family operated and relatives consumed much of the beer. Because of the layout of the converted home, pilferage was undetectible. Applicants failed to raise prices to keep pace with inflation. The restaurant went out of business on September 30, 1973.

5. That the sales tax examiner's projected computation of sales, based on applicants' purchases, did not adequately reflect the many factors which effected the actual business and sales.

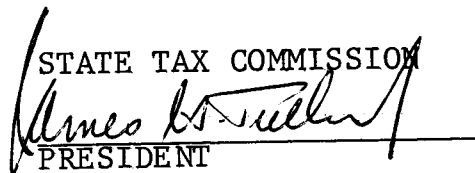
6. That applicants' recordation was inadequate to support the purported sales figures contained in taxpayers' sales tax returns for the periods in question.

7. That during the periods September 1, 1971 through September 30, 1973, the markup over purchases were as follows: food 100%, wine and liquor 175%, beer 125% and tobacco 50%.

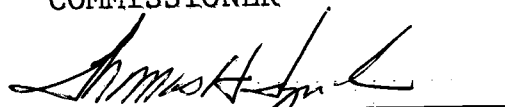
8. That all penalties are cancelled and interest is to be computed at the statutory minimum rate.

9. That the application of Edward Wilson and Paul F. Wilson, individually and as co-partners, d/b/a Beau Sejour is granted to the extent as shown in paragraphs 7 and 8 above and in all other respects denied.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO Secretary to the State Tax Commission

Please attach to Decisions

September 1, 1977

M-75 (5/76)

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

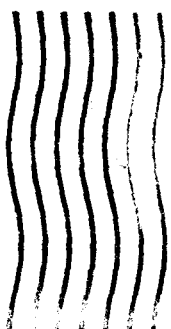
STATE CAMPUS

ALBANY, N. Y. 12227



James N. Werkhoven, P.A.
90 Lawrence Avenue
Smithtown, New York 11787

*18 Trade Road
Smithtown N.Y. 11787*





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDWARD WILSON & PAUL F. WILSON
Individually & as Co-partners
d/b/a BEAU SEJOUR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~year(s)~~ Period(s)
9/1/71 through 9/30/73

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1 day of September, 1977, he served the within
Notice of Determination by ~~certified~~ mail upon James N. Werkhoven, 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: James N. Werkhoven, P.A.
18 Manor Road
Smithtown, NY 11787

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 Postal Service 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

1 day of September, 1977.

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EDWARD WILSON and PAUL F. WILSON : AFFIDAVIT OF MAILING
Individually and as Co-partners
d/b/a BEAU SEJOUR
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
September 1, 1971 through September 30, 1973.

State of New York
County of Albany

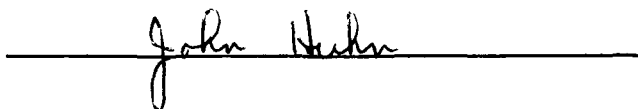
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of September , 1977 , ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Edward Wilson & Paul F.
Wilson d/b/a Beau Sejour ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edward Wilson & Paul F. Wilson
Individually and as Co-Partners
d/b/a Beau Sejour
353 Stewart Avenue
Bethpage, New York 11714
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 Postal Service 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

6th day of September , 1977.

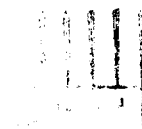




STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N. Y. 12227

Edward & Paul F. Wilson
Individually and as Co-partners
d/b/a Beau Sejour
Stewart & Central Avenues
Bethpage, New York 11714



HELP THE SOCIETY
ST. VINCENT DE
HELP THE NE



8/26/77



SMALL CLAIMS

TA-26 (4-76) 25M

STATE OF NEW YORK

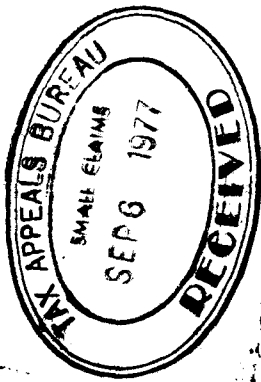
Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

**James N. Werkhoven, P.A.
18 Manor Road
Smithtown, NY 11787**





STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

Sau

August 22, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

REMAILED: SEPTEMBER 1, 1977

Edward & Paul F. Wilson
Individually and as Co-partners
d/b/a Beau Sejour
Stewart & Central Avenues
Bethpage, New York 11714

GENTLEMEN:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1250** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
EDWARD WILSON and PAUL F. WILSON	:	
Individually and as Co-partners	:	
d/b/a BEAU SEJOUR	:	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 Periods September 1, 1971 through	:	
September 30, 1973.	:	

Applicants, Edward Wilson and Paul F. Wilson, individually and as co-partners, d/b/a Beau Sejour, Stewart and Central Avenues, Bethpage, New York 11714, have 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 September 1, 1971 through September 30, 1973. (File No. 10450). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1977, at 9:15 A.M. Applicants appeared by James N. Werkhoven, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUE

Was additional sales tax, based on a projection of gross receipts by the Sales Tax Bureau, due from applicants, Edward Wilson and Paul F. Wilson, d/b/a Beau Sejour, for the periods September 1, 1971 through September 31, 1973?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Sales Tax Bureau audited applicants' books and records after the restaurant had failed and was closed and did not observe the establishment in operation. The books were in complete order and sales tax returns had been filed and paid when due.

2. The sales tax examiner found the over-all markup on the Federal return to be 83.86% and considered this to be too low. The tax examiner projected the gross receipts based on a previous audit which had been conducted for the periods September 1, 1966 through November 30, 1969 and arrived at the same markup on purchases for the current audit periods as were previously determined: food 175%, wine and liquor 275%, beer 350% and tobacco 50%.

3. Applicants contended that at the previous audit there was no observation of the restaurant in operation by the sales tax auditor. They were forced to agree to the adjustment because they were in desperate need of capital and New York State had a lien on the property which had to be removed by paying the assessment in order to secure capital by borrowing.

4. The establishment was a gourmet restaurant operating out of an old converted home. The food and drink were of the best quality and the servings of all items were oversized. Applicants butchered the meat themselves. The waste factor on all items was

large. The restaurant was family operated and relatives consumed much of the beer. Because of the layout of the converted home, pilferage was undetectible. Applicants failed to raise prices to keep pace with inflation. The restaurant went out of business on September 30, 1973.

5. That the sales tax examiner's projected computation of sales, based on applicants' purchases, did not adequately reflect the many factors which effected the actual business and sales.

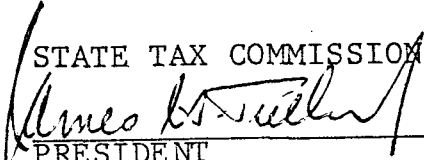
6. That applicants' recordation was inadequate to support the purported sales figures contained in taxpayers' sales tax returns for the periods in question.

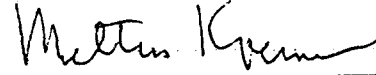
7. That during the periods September 1, 1971 through September 30, 1973, the markup over purchases were as follows: food 100%, wine and liquor 175%, beer 125% and tobacco 50%.

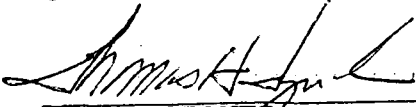
8. That all penalties are cancelled and interest is to be computed at the statutory minimum rate.

9. That the application of Edward Wilson and Paul F. Wilson, individually and as co-partners, d/b/a Beau Sejour is granted to the extent as shown in paragraphs 7 and 8 above and in all other respects denied.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER