

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ROGER DEAN (SELLER)  
D/B/A EAGLE BAY FOODTOWN  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ Period(s) :  
June 1, 1966 through February 28, 1974

AFFIDAVIT OF MAILING

State of New York  
County of Albany

John Huhn , 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 1 day of September , 1978, she served the within  
Notice of Determination by (~~certified~~) mail upon Roger Dean (Seller)  
d/b/a Eagle Bay Foodtown  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Roger Dean (Seller)  
d/b/a Eagle Bay Foodtown  
Eagle Bay, 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 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 , 1978

John Huhn

[Signature]

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ROGER DEAN (SELLER)  
D/B/A EAGLE BAY FOODTOWN  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period(s)  
June 1, 1966 through February 28, 1974

AFFIDAVIT OF MAILING

State of New York  
County of Albany

John Huhn, 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 1 day of September, 1978, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Charles E. Drake,  
Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Charles E. Drake, Esq.  
1416 Genesee Street  
Utica, NY

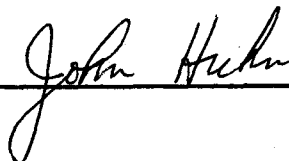
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(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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, 1978.



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

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

**September 1, 1978**

**Roger Dean (Seller)**  
**d/b/a Eagle Bay Foodtown**  
**Eagle Bay, New York**

**Dear Mr. Dean:**

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 & 1243** 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,

*Michael Alexander*  
**Michael Alexander**  
**Supervising Tax**  
**Hearing Officer**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :

of :

ROGER DEAN (SELLER) :

D/B/A EAGLE BAY FOODTOWN :

DETERMINATION

for Revision of a Determination or for  
Refund of Sales and Use Taxes under  
Articles 28 & 29 of the Tax Law for the  
Period June 1, 1966 through February 28,  
1974. :

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Applicant, Roger Dean (Seller) d/b/a Eagle Bay Foodtown, Eagle Bay, New York, 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 period June 1, 1966 through February 28, 1974 (File No. 01618).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Utica, New York, on December 8, 1977 at 2:45 P.M. Applicant appeared by Charles E. Drake, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel).

#### ISSUES

I. Whether the determination of sales taxes due for the periods in issue, based on an audit by the Sales Tax Bureau of applicant's available records, is correct.

II. Whether the State Tax Commission has the authority to assess the liability of the applicant.

FINDINGS OF FACT

1. On November 21, 1974 as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Roger Dean (Seller) d/b/a Eagle Bay Foodtown, for the period June 1, 1966 through February 28, 1974 in the amount of \$20,409.00, plus penalty and interest of \$8,728.67, for a total due of \$29,137.67.

2. Applicant, Roger Dean (Seller) d/b/a Eagle Bay Foodtown, was engaged in the operation of a retail grocery store from June 1, 1966 through December 31, 1973. He did not register with the Sales Tax Bureau. No sales tax was ever paid, although he collected sales taxes totaling \$13,392.02. An audit was conducted using Federal income tax returns for the years 1966 through 1973, purchase invoices for 1973, check payment stubs for 1973 and sales journals for the years 1966 through 1973. Taxable resale purchases for the months of January, April, August and October 1973 and gross resale purchases for the same months were used to compute the percentage of taxable purchases.

Taxable resale purchases -  $\frac{\$ 34,948.81}{\$121,706.30} = 28.7\%$  Taxable purchases.  
Gross resale purchases -

Total Gross Sales for entire period in issue was	\$2,203,977.97
Percentage of taxable purchases	$\times .287\%$
Total taxable sales for entire period in issue	\$ 632,541.78

Therefore, the computation of applicable sales tax for each quarter upon total taxable sales for the period in issue amounted to \$20,409.00.

3. Applicant, Roger Dean (Seller) d/b/a Eagle Bay Foodtown, offered no documentary or other substantial evidence that the computed sales taxes due did not reflect his sales tax liability.

4. Applicant, Roger Dean (Seller) d/b/a Eagle Bay Foodtown, sold the grocery store business to Timothy Hitchcock on February 13, 1974, the date the purchaser's loan was approved, though the actual transfer took place on January 1, 1974. The total sales price was \$124,000.00. Sales price of furniture and fixtures was \$18,000.00. The bulk sales tax of \$720.00 was paid on February 22, 1974.

CONCLUSIONS OF LAW

A. That section 1138(a) provides in part as follows:

"If a return required by this article is not filed...the amount of tax due shall be determined by the tax commission from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid...or other factors. Notice of such determination shall be given to the person liable for the collection or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed...shall apply to the tax commission for a hearing... After such hearing the tax commission shall give notice of its determination to the person against whom the tax is assessed...." Therefore, inasmuch as sales tax returns were never filed as required, determination of the tax due was properly and justifiably made from such information as was available.

B. That the application of Roger Dean (Seller) d/b/a Eagle Bay Foodtown is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on November 21, 1974 is sustained.

DATED: Albany, New York  
September 1, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER