

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
John Hubak :  
d/b/a The Bear's Den : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 of the Tax Law :  
for the Period 6/1/73 - 1/1/76. :

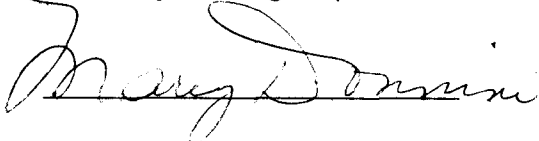
State of New York  
County of Albany

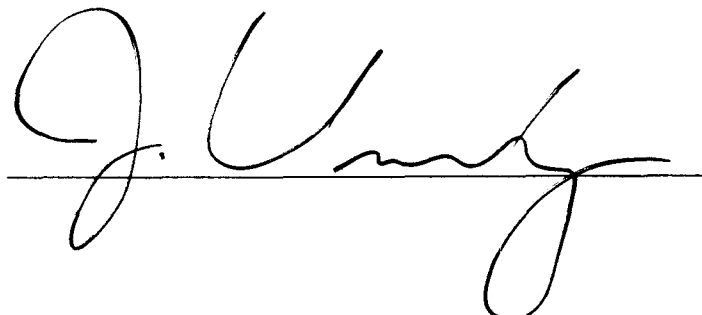
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Determination by mail upon John Hubak, d/b/a The Bear's Den, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John Hubak  
d/b/a The Bear's Den  
13 Holland Ave.  
Binghamton, NY 13905  
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
31st day of August, 1979.

  
Mary Dominici

  
Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

John Hubak  
d/b/a The Bear's Den  
13 Holland Ave.  
Binghamton, NY 13905

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 & 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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
JOHN HUDAK d/b/a	:	DETERMINATION
THE BEAR'S DEN	:	
	:	
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, 1973 through	:	
January 1, 1976.	:	

---

Applicant, John Hudak d/b/a The Bear's Den, 13 Holland Street, Binghamton, New York 13905, 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, 1973 through January 1, 1976 (File No. 17814).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 44 Hawley Street, Binghamton, New York, on September 25, 1978 at 1:15 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

ISSUES

I. Whether the markup techniques used by the Sales Tax Bureau accurately determined additional tax due from applicant for the period June 1, 1973 through December 31, 1975.

II. Whether applicant, as the seller in a bulk sale, is liable for sales tax on the sale of personal property included in the purchase price of the business.

FINDINGS OF FACT

1. Applicant, John Hudak d/b/a The Bear's Den, operated a neighborhood tavern during the period at issue and on January 1, 1976, the business was sold to Joseph P. Drahos.
2. On June 30, 1976, as the result of information submitted by applicant on a bulk sale questionnaire, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for \$3,840.01, plus penalty and interest of \$1,424.07, for a total of \$5,264.08, for the period June 1, 1973 through January 1, 1976.
3. On July 13, 1976, applicant filed a letter of protest regarding the aforementioned Notice.
4. On February 4, 1977, an informal conference was held, at which applicant and an examiner from the Binghamton District Office of the Department of Taxation and Finance appeared. Applicant produced his sales and purchase records. Using the month of July 1975 as a sample period, the examiner performed markup tests for beer, liquor, wine and cigarettes. The test disclosed that the audited markups were lower than those used by the Sales Tax Bureau in computing the above Notice. The audited markups were then applied to applicable purchases, to determine audited taxable sales of \$132,099.00. Reported taxable sales of \$94,121.00 were deducted from this amount, leaving additional taxable sales of \$37,998.00 and tax due thereon of \$2,529.11.
5. The examiner recommended to the Sales Tax Bureau that the tax on the Notice dated June 30, 1976 of \$3,840.01 be adjusted to reflect the audit findings; however, the Sales Tax Bureau did not adjust said Notice.

6. On March 9, 1977, the Sales Tax Bureau issued a second Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for \$280.00, plus penalty and interest. The amount of tax on said Notice was based on the value of the tangible personal property transferred in the sale of the business. This amount was in addition to the previous Notice.

7. Applicant contended that the discrepancy in sales was due to merchandise thefts and a substantial inventory on hand when the business was sold, as well as self-consumption. Applicant also contended that the tax due on the transfer of personal property was paid by the purchaser.

8. Applicant failed to submit any documentation to support his contentions.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau's audit of applicant's books and records followed generally accepted audit procedures, consistent with the nature of applicant's business operation; therefore, the resultant finding of \$2,529.11 in additional sales tax due for the period June 1, 1973 through December 31, 1975 is correct.

B. That with respect to the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, issued March 9, 1977 for tax due on the value of the tangible personal property transferred in the sale of the business, applicant failed to sustain the burden of proof that said tax was paid by the purchases; therefore, said Notice is sustained.

C. That the application of John Hudak d/b/a The Bear's Den is granted to the extent that the additional sales tax of \$3,840.01 is reduced to \$2,529.11 (plus penalty and interest), as indicated in Conclusion of Law "A"; that the

Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 30, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER