

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Glenn E. Dundon :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period 3/1/76-9/9/81.

State of New York :

ss.:

County of Albany :

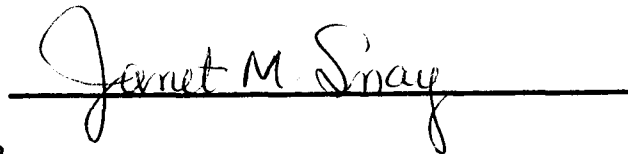
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he/she served the within notice of Decision by certified mail upon Glenn E. Dundon the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

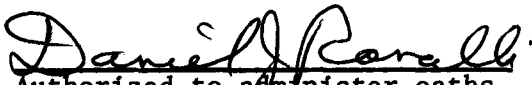
Glenn E. Dundon
111 Brown Blvd.
Brownville, NY 13615

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
19th day of June, 1986.




Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Glenn E. Dundon :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period 3/1/76-9/9/81.

State of New York :

ss.:

County of Albany :

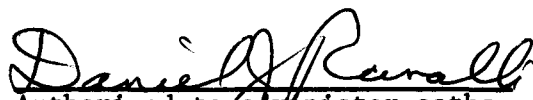
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 19th day of June, 1986, he served the within notice of Decision by certified mail upon H. Thomas Swartz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

H. Thomas Swartz
Swartz, Evans, Taylor, Dickinson
316 Sherman St.
Watertown, NY 136013690

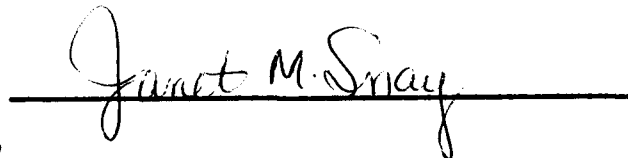
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
19th day of June, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



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

June 19, 1986

Glenn E. Dundon
111 Brown Blvd.
Brownville, NY 13615

Dear Mr. Dundon:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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:

NYS Dept. Taxation and Finance
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
H. Thomas Swartz
Swartz, Evans, Taylor, Dickinson
316 Sherman St.
Watertown, NY 136013690

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GLENN E. DUNDON	:	DECISION
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 March 1, 1976	:	
through September 9, 1981.	:	

Petitioner, Glenn E. Dundon, 111 Brown Boulevard, Brownville, New York 13615, filed a petition 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 March 1, 1976 through September 9, 1981 (File No. 48617).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 207 Genesee Street, Utica, New York, on April 1, 1986 at 11:00 A.M. Petitioner appeared by Swartz, Evans, Taylor & Dickinson, P.C. (H. Thomas Swartz, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether petitioner was liable for sales tax attributable to the previous owners of a business purchased by him.

FINDINGS OF FACT

1. On January 5, 1982 the Audit Division issued the following notices of determination and demands for payment of sales and use taxes due to petitioner, Glenn E. Dundon:

- (a) For the period March 1, 1976 through May 31, 1980, \$2,264.19 in tax and \$611.03 in penalty, plus interest.

- (b) For the period June 1, 1980 through September 9, 1981, total tax due of \$1,309.50, penalty of \$159.71, plus interest.

2. The assessments were based on petitioner's liability under section 1141(c) of the Tax Law as purchaser of a tavern business known as "Tale's End", Brownville, New York, from Arthur I. Gagnon and Emma Z. Gagnon.

3. After petitioner's timely protest of the assessments, the Audit Division secured the sellers' records and examined them for the period March 1, 1979 through November 30, 1981, the period during which the sellers operated the business. As a result of this audit, notices of assessment review were issued to petitioner on October 25, 1982. These notices provided as follows:

- (a) The tax due for the period March 1, 1976 through May 31, 1980 previously stated as \$2,264.19, plus penalty and interest was reduced to \$1,039.85, plus adjusted penalty and interest.
- (b) The tax due for the period June 1, 1980 through September 9, 1981 of \$1,309.50, plus penalty and interest, was reduced to \$1,298.41, plus adjusted penalty and interest.

4. The Auditor found that the sellers reported a valuation of \$1,511.00 on furniture, fixtures and equipment, while depreciation schedules indicated a value of \$5,000.00. Tax on additional taxable use of \$3,489.00 appears to have been included in the revised assessment. Petitioner, however, had paid \$350.00 in tax with his first quarterly return in payment of tax based on the \$5,000.00 valuation.

5. Petitioner does not contest sellers' liability for taxes.

CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law provides, in pertinent part:

"(c) whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of such sale, transfer or assignment, or paying therefor, notify the tax commission by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee that he owes any tax pursuant to this article, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

* * *

For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the state of any such taxes theretofore or thereafter determined to be due to the state from the seller, transferrer, or assignor, except that the liability of the purchaser, transferee or assignee shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, transferred or assigned to such purchaser, transferee or assignee, whichever is higher, and such liability may be assessed and enforced in the same manner as the liability for tax under this article...."

B. That since it has not been shown that the bulk sale notice under section 1141(c) of the Tax Law was given, petitioner is personally liable for all sales taxes due from and owing by the sellers, Emma Z. and Arthur I. Gagnon. As petitioner paid tax on the \$5,000.00 in tangible personal property acquired, the tax based thereon (\$350.00) should be deducted from the assessments.

C. That except for the credit for tax paid on tangible personal property (Conclusion of Law "B"), the notices of determination and demands for payment of sales and use taxes due, issued January 5, 1982, as modified by the Notice of Assessment

Review dated October 25, 1982, are sustained and the petition is otherwise denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986

Rodrich Alden
PRESIDENT

Francis R K Oling
COMMISSIONER

Mark Fredlund
COMMISSIONER

P 319 372 803

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to <i>Glenn E. Dandon</i>	
Street and No. <i>111 Brown Blvd.</i>	
P.O. State and ZIP Code <i>Brownville N.Y. 13615</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

P 319 372 804

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to <i>H. Thomas Swartz</i>	
Street and No. <i>316 Sherman St.</i>	
P.O. State and ZIP Code <i>Watertown, N.Y. 13601-3690</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	