

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GIBSON & CUSHMAN OF NEW YORK, INC. :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period 8/01/65 :
through 2/28/69.

State of New York
County of Albany

Donna Scranton , 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 18th day of May , 1976 , she served the within
Notice of ~~DEFICIENCY~~ (or Determination) by (~~certified~~) mail upon Gibson &
Cushman of NY, Inc. (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Gibson & Cushman of New York, Inc.
38 Homan Avenue
Bay Shore, 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

18th day of May , 1976.

Janet Maeh

Donna Scranton

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GIBSON & CUSHMAN OF NEW YORK, INC. :

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OF NOTICE OF DECISION
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For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~XXXXXX~~ Period 8/1/65
through 2/28/69.

State of New York
County of Albany

Donna Scranton, 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 18th day of May, 1976, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Kenneth
Carroad, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Kenneth Carroad, Esq.
40 Worth Street
New York, 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

18th day of May, 1976.

Janet E. [Signature]

Donna Scranton



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, N.Y.
May 18, 1976

TELEPHONE: (518) 457-3850

Gibson & Cushman of New York, Inc.
38 Homan Avenue
Bay Shore, New York

GENTLEMEN:

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

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

PAUL B. COBURN
SUPERVISING TAX CONFERENCES
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
GIBSON & CUSHMAN OF NEW YORK, INC. : 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 February 28, 1969.

Applicant, Gibson & Cushman of New York, Inc., with offices at 38 Homan Avenue, Bay Shore, New York, has 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 August 1, 1965 through February 28, 1969. (Identification No. 11-2065343.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 20, 1975, at 9:15 A.M. Applicant was represented by Kenneth Carroad, Esq. The Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq. of counsel).

ISSUE

Is applicant, Gibson & Cushman of New York, Inc., liable for additional tax based on purchases subject to sales and use tax on fuel, machinery and equipment used in its hydraulic dredging operations?

FINDINGS OF FACT

1. On June 26, 1970, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Gibson & Cushman of New York, Inc., imposing additional tax due based on purchases subject to sales and use tax in the total sum of \$26,267.79, including penalty and interest for the period of August 1, 1965 through February 28, 1969.

2. Applicant, Gibson & Cushman of New York, Inc., is a hydraulic dredging contractor. It has been in business over fifty years and was the founder of the hydraulic dredging business in metropolitan New York and Long Island. Its business activity in the main consists in extracting sand or fill and selling it by the cubic yard to a variety of customers. The sand was extracted from the bed of the waterways such as Long Island Sound, the Great South Bay and the Raritan River in New Jersey.

Its customers for the most part include the U.S. Army Corps of Engineers, Department of Public Works of the State of New York, Port of New York Authority, the City of New York, Town of Hempstead, the Long Island State Park Commission and the New York State Park Commission. In its type of work, permits to extract the sand had to be secured from the private owners or municipalities and a royalty usually had to be paid per cubic yard. In the Long Island area royalties were paid to various towns, Hempstead, Oyster Bay, Islip and Brookhaven. In another area in Long Island, the Replique Corporation, owners of some 80,000 acres under water, were paid a royalty for the sand.

The only place where its dredges could operate are navigable waters and navigable streams so that the work was always under the control of the U.S. Army Engineer Corps. Its employees are covered by the Jones Act, a Federal workmen's compensation covering seamen on navigable waters. The sand extracted is used by its purchasers, who pay according to the cubic measure, as a base for all types of construction. The cost of dredging sand fill is 75 cents as against \$2.50 for truck hauled sand, a great economic consideration for customers. Some customers, like the Port of New York Authority, contracted for dredging for a pier and also for the sand extracted. In the period in issue there was no customer solely for dredging.

3. Petitioner, Gibson & Cushman of New York, Inc., purchased fuel, gasoline and diesel oil to power their dredges, barges and generators, used in its dredging operations. Equipment purchased includes heavy steel pontoons, pontoon and shore pipe, industrial marine pumps, impellers, cutters, cutter heads, marine ball joints and barges.

4. Petitioner, Gibson & Cushman of New York, Inc., have timely filed quarterly New York State and local sales and use tax returns and have paid tax due to its vendors when they were the ultimate consumer and when said purchases were not items used in the dredging operation. A schedule of all purchases for period in question spot-checked was found to be accurate.

CONCLUSIONS OF LAW

A. That in accordance with the meaning and intent of former section 1115(a) (12) of the Tax Law, exemption from sales and use tax was provided for machinery directly and exclusively used in the production of tangible personal property, by mining or extracting. The extraction and mining of sand by applicant, Gibson & Cushman of New York, Inc., constituted such production during the periods in issue.

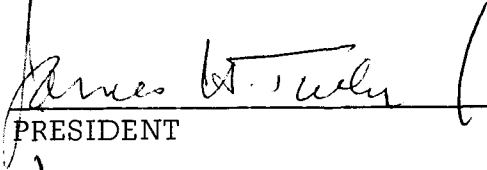
B. That in accordance with the meaning and intent of section 1115(c) of the Tax Law exemption from sales and use tax is provided for fuel for use or consumption directly and exclusively in the production of tangible personal property, for sale by extracting. That extraction and mining of sand by applicant, Gibson & Cushman of New York, Inc., constituted such production during the periods in issue.

C. That therefore the purchases by applicant, Gibson & Cushman of New York, Inc., of fuel, gasoline and diesel oil, machinery and equipment used in hydraulic dredging operation to extract sand in navigable waters and sold per cubic yard to customers, constituted purchases not subject to the sales and use tax pursuant to the aforesaid sections.

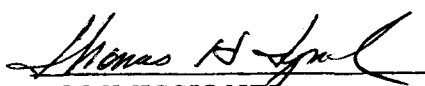
D. That the application of Gibson & Cushman of New York, Inc. is granted and the Notice and Demand for Payment of Sales and Use Taxes Due issued June 26, 1970, is cancelled.

DATED: Albany, New York
May 18, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER