

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

COUNTY FIRE DOOR CORP.

AFFIDAVIT OF MAILING

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) :
12/1/67 through 11/30/70.

State of New York
County of Albany

Catherine Steele, 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 24th day of August, 1976, she served the within
Notice of Determination by ~~certified~~ mail upon County Fire Door Corp.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: County Fire Door Corp.
1190 Longwood Avenue
Bronx, New York 10474

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)~~
~~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

24th day of August, 1976

Catherine Steele

Janet Mack



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

August 24, 1976

TELEPHONE: (518) **457-3850**

County Fire Door Corp.
1190 Longwood Avenue
Bronx, New York 10474

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
Hearing Officer

Enc.

~~xxxxxx Bureau's Representative xxxxxxxx~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
COUNTY FIRE DOOR CORP.	:	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 12/1/67 through 11/30/70.	:	

Petitioner, County Fire Door Corp. of 1190 Longwood Avenue, Bronx, New York 10474, applied for revision of a determination or for refund of sales and use taxes under Article 28 and 29 of the Tax Law for the period 12/1/67 to 11/30/70.

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 31, 1976, at 9:30 a.m., before Edward L. Johnson, Hearing Officer. The taxpayer appeared by Charles Lande, executive vice president of the corporation. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the determination of additional sales and use tax found due based upon a Sales Tax Bureau audit was correct for the period 12/1/67 through 11/30/70.

(2)

FINDINGS OF FACT

1. A Notice of Determination and Demand for payment of Sales and Use Taxes Due, dated April 4, 1972 (File No.01054) was issued by the Sales Tax Bureau after a field audit. It charged the petitioner, County Fire Door Corp., with a sales and use tax deficiency for the period December 1, 1967 through November 30, 1970, amounting to \$7,508.06 plus penalty and interest of \$2,744.82 for total allegedly due as of that date \$10,252.88.

2. Petitioner, County Fire Door Corp, hereinafter "County", timely filed an application for revision of a determination or for refund of sales and use tax for the period 12/1/67 through 11/30/70.

3. Petitioner, County, fabricated fire doors which were technically doors which met the requirements of various building codes as to fire resistance. They were made of different materials including wood, aluminum, steel or alloys. They were made in various sizes and types. Petitioner, County, operated essentially on a contract basis, selling custom made doors and door frames made for a specific building in accordance with architectural plans and specifications for that project. The purchaser may have been the general contractor or builder who was building for his own account, or who was building or remodeling for an owner.

(3)

The owner may have been the Federal government, a state agency, a hospital, a school board, an apartment building operator, or an individual who hired an architect or a contractor to remodel or construct a building.

4. The taxpayer, County, sold to customers in about twelve states. Most doors sold to out of state purchasers were shipped to the sites specified in the purchase orders. Some, however, were picked up by the purchaser or his agent at County's New York factory.

5. The petitioner, County, filed sales and use tax returns to the various states during the period in issue. County collected and remitted sales and use taxes to New York State in accordance with petitioner's understanding of the sales tax requirements.

6. Some purchasers furnished resale certificates to the petitioner, and on these sales no sales tax was collected. Other purchasers gave petitioner, County, Contractor Exempt Purchase Certificates. Still others supplied certificates of Capital Improvement to indicate to petitioner that County should not collect the sales or use tax. The applicability of the various exemption certificates was changed by the Tax Law as of September 1, 1969, but retroactive to August 1, 1967. The method of applying sales and use taxes to fabricators changed as of May 10, 1969.

(4)

7. In March 1972 a field audit of the petitioner, County, was made by representatives of the Sales Tax Bureau for the period 12/1/67 through 11/30/70.

8. Every invoice was examined in each of three random months in 1969 and 1970, and a review was made of the sales and use taxes recorded by the taxpayer as charged or exempted. All alleged exemptions were scrutinized for compliance with the Tax Law.

9. The auditor disallowed as inapplicable or misapplied 7.67% of the sales reported as being non-taxable by petitioner, County. Assuming this margin of error was relatively constant for the period under review, the Sales Tax Bureau recomputed non-taxable sales for the entire period under review. This amounted to 34.9% of sales reported as non-taxable sales by the taxpayer on his quarterly sales and use tax reports from 12/1/67 through 11/30/70.

10. The amount of tax applicable to under-reporting amounted to approximately 6% of gross sales as shown on the books of the taxpayer. These books were deemed to be substantially accurate.

11. The acceptance by the taxpayer, County, of some exemption certificates which were inapplicable to particular sales was done in good faith and was a misunderstanding by the taxpayer of complex rules which were in a state of flux.

(5)

CONCLUSIONS OF LAW

A. That the recomputation of additional sales tax due on sales reported by the taxpayer as non-taxable was reasonably based on the records of the taxpayer and the application of relevant sections of the Tax Law.

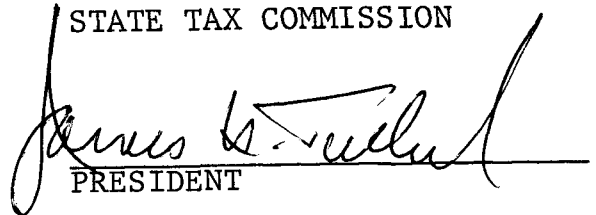
B. That the taxpayer made reasonably diligent efforts to collect and remit the proper amount of sales and use tax. The penalty is cancelled.

C. That the taxpayer's petition is in all other respects denied.

D. That pursuant to the Tax Law, interest shall be added to the tax due until paid.

DATED: Albany, New York
August 24, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER