

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CHISHOLM CONTRACTING CO., INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~XXXXXX~~ Period (g)
August 1, 1965 through November 30,
1967.

State of New York
County of Albany

Carmen Mottolese, 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 10th day of November, 1976, she served the within
Notice of Determination by ~~XXXXXX~~ mail upon Chisholm Co., Inc.

~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Chisholm Contracting Co., Inc.
Round Lake, New York 12151

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

10th day of November, 1976.

Carmen Mottolese

Janet Trach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

November 10, 1976

ADDRESS YOUR REPLY TO

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

Chisholm Contracting Co., Inc.
Round Lake, New York 12151

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 and 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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~Redacted text~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CHISHOLM CONTRACTING CO., 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 November 30, 1967.	:	

Applicant, Chisholm Contracting Co., Inc., Round Lake, New York 12151, 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 November 30, 1967. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on June 17, 1976, at 9:15 A.M. Applicant was represented by Dugald D. Chisholm, President. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Solomon Sies, Esq. of counsel).

ISSUES

I. Did the work orders between the applicant and General Electric constitute lump sum capital improvement contracts?

II. Did the contract between the applicant and Troy Boiler Works, Inc. call for the purchase of tangible personal property?

III. Were charges for the rental of equipment, which included an operator, subject to sales tax?

FINDINGS OF FACT

1. Applicant, Chisholm Contracting Co., Inc., timely filed New York State and local sales and use tax returns for the period August 1, 1965 through November 30, 1967.

2. On September 30, 1968, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use taxes due, against the applicant, Chisholm Contracting Co., Inc., in the sum of \$1,408.86 tax, penalty and interest due. The determination so issued was the result of a field audit which disclosed additional purchases subject to use tax.

3. Applicant, Chisholm Contracting Co., Inc., is an industrial contractor and performed numerous jobs for the General Electric Company. The repair and installation work was not held taxable by the Sales Tax Bureau because exemption certificates were issued by General Electric. The Sales Tax Bureau taxed only materials which were incorporated into lump capital improvement jobs.

4. Applicant, Chisholm Contracting Co., Inc., entered into an agreement, dated April 26, 1966, with Troy Boiler Works, Inc., which

stated that Troy Boiler Works, Inc. would furnish the labor and materials required to fabricate the inlet and duct work for Chisholm Contracting Co., Inc., in accordance with the specifications so stipulated in Chisholm's contract with General Electric Company. The agreement further stated that Troy Boiler Works, Inc. would furnish a qualified man to supervise the erection of the duct work; however, the labor to install the duct work was to be performed by Chisholm Contracting Co., Inc.

5. Correspondence from Troy Boiler Works, Inc., to the Sales Tax Bureau indicated that said company did not take part in the erection of the duct work at the General Electric plant site. Troy Boiler Works, Inc. did send a supervisor to facilitate the proper installation of the duct work.

6. Applicant, Chisholm Contracting Co., Inc., rented construction equipment with an operator. The original billing did not separately state the charges for the operator. However, subsequent information disclosed that 28.75% of the total rental charges represent the charges for the operator.

CONCLUSIONS OF LAW

A. That the material purchases taxed by the Sales Tax Bureau were "purchases at retail" as defined in section 1101(b)(1) and properly taxed as materials incorporated into lump sum capital improvement contracts with the General Electric Company. The

acceptance of an exemption certificate by Chisholm Contracting Co., Inc. did not relieve them of their sales tax obligation on the purchase of materials incorporated into such lump sum capital improvement projects.

B. That the contract between Troy Boiler Works, Inc. and the applicant, Chisholm Contracting Co., Inc., was for furnishing tangible personal property to the job site and that all installation into real property was done by Chisholm. These materials were purchases at retail and properly taxed.

C. That the applicant has submitted substantial evidence indicating that 28.75% of the total equipment rentals represent charges for the operator and to that extent the charge for such operator is not taxable.

D. That the applicant acted in good faith and the penalty is cancelled.

E. That the application is granted to the extent of reducing additional sales tax due for the period August 1, 1965 through November 30, 1967, from \$1,115.34 to \$1,080.61 together with such interest as may be lawfully due. 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 September 30, 1968, and except as so granted, the application is in all other respects denied.

DATED: Albany, New York
November 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER