

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FULLER FURNACE & CHIMNEY CLEANING
CORP.

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~XXXXX~~ Period 12/1/65:
through 8/31/69.

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

State of New York
County of Albany

MARY GROFF, 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 19th day of August, 1975, she served the within
Notice of ~~Reconsideration~~ (or Determination) by ~~(certified)~~ mail upon FULLER FURNACE &
CHIMNEY CLEANING CORP. ~~(represented by XXXX)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Fuller Furnace & Chimney Cleaning Corp.
c/o Howard Penser, Esq.
350 Fifth Avenue
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 ~~(represented by XXXX)~~
~~XX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(represented by XXXX)~~ petitioner.

Sworn to before me this

19th day of August, 1975.

Janet Mack

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FULLER FURNACE & CHIMNEY CLEANING
CORP.

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period 12/1/65:
through 8/31/69.

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

State of New York
County of Albany

MARY GROFF, 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 19th day of August, 1975, she served the within
Notice of ~~Determination~~ (or Determination) by ~~(CERTIFIED)~~ mail upon HOWARD PENSER, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Howard Penser, Esq.
350 Fifth Avenue
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

19th day of August, 1975.

Janet Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
~~James E. Tully, Jr.~~
MARIO A. PROCCACCIO, PRESIDENT

A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
August 19, 1975

Fuller Furnace & Chimney
Cleaning Corp.
c/o Howard Penser, Esq.
350 Fifth Avenue
New York, 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 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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
FULLER FURNACE & CHIMNEY CLEANING CORP.	:	DETERMINATION
for a Hearing to review a Determination or a denial of refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period December 1, 1965 through August 31, 1969.	:	
	:	

Fuller Furnace & Chimney Cleaning Corp. filed an application under section 1138 of the Tax Law for a hearing to review a determination of sales and use taxes due under Articles 28 and 29 of the Tax Law for the period December 1, 1965 through August 31, 1969.

Although a determination of the State Tax Commission has not been issued, a hearing was granted on the basis of notices and demands issued by the Department in accordance with tax returns timely filed by the applicant, which showed a tax due, but without enclosing payment. These returns cover the period from December 1, 1965 through August 31, 1969, and the amount in issue amounts to \$62,507.88. The amounts on said returns are not in question and only a question of law is involved.

A hearing was duly held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on October 19, 1972, before Nigel G. Wright, Hearing Officer. The applicant was represented by Howard Penser, Esq. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the applicant's services of cleaning boilers is taxable under section 1105(c) of the Tax Law imposing a tax on "The receipts from every sale...of the following services: (5)"... servicing ... real property" ... but ... excluding "interior cleaning and maintenance services performed on a regular contractual basis for a term of not less than thirty days, other than window cleaning, rodent and pest control and trash removal from buildings.

FINDINGS OF FACT

1. Applicant is engaged in the business of cleaning boilers which are located in buildings. This involves both the cleaning of the inside of the boiler itself (a "tube and base" cleaning), the cleaning of the boiler breech (exhaust) and chimney (a major cleaning) and sometimes the cleaning of hot air ducts in the building. The buildings were typically office buildings, large apartment houses and institutions.

2. Applicant does no repair work or plumbing work to either boilers or oil burners.

3. The cleaning of boilers is the removal of soot and ash. This is done primarily because soot and ash have high insulating properties and reduce the efficiency of the heating system.

4. Applicant uses large truck-mounted vacuum cleaning equipment in its work. Before 1961, cleaning was done usually by small drum type industrial vacuum equipment. Furnaces have been cleaned by some form of vacuum equipment for at least 50 years. Before that, furnaces and ducts were cleaned primarily by brushes. Some buildings own their own vacuum equipment which is used for general cleaning purposes or have a central vacuum system built into the building.

5. The frequency of cleaning depends on the size of the building, the type of fuel used, the management's attitude on heating efficiency and other factors.

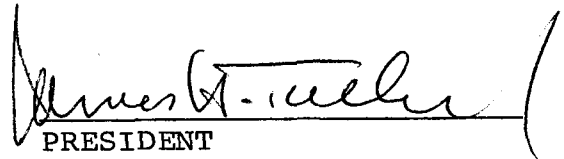
6. A typical contract calls for one cleaning in the summer and six cleanings in the winter. Some contracts call for 18 or 20 cleanings a year.

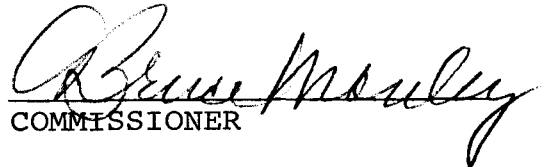
CONCLUSIONS OF LAW

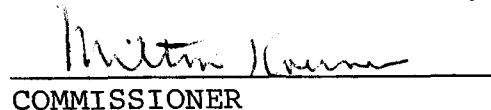
The applicant's services are exempt from tax. They are clearly "interior cleaning and maintenance services", Pringle v. Washington 77 Wash 2d 575 (Wash. Sp. Ct. 1970). The notices and demands issued against applicant are cancelled.

DATED: Albany, New York
August 19, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER