

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~
Application :
of

LONG ISLAND RELIABLE CORPORATION :

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

For a Redetermination of a Deficiency or
a Refund of Sales and Use Taxes :
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Years~~ Periods :
December 1, 1966 through September 3,
1969.

State of New York
County of Albany

JANET MACK , 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 29th day of December , 1975, she served the within
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Long Island
Reliable Corporation (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Long Island Reliable Corporation
88 East Hoffman Avenue
Lindenhurst, 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

29th day of December , 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

LONG ISLAND RELIABLE CORPORATION

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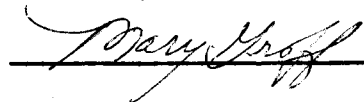
JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of December, 1975, she served the within
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon J. Ozias Kaufman, Esq.

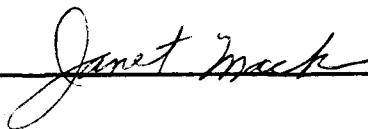
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: J. Ozias Kaufman, Esq.
Kaufman & Schotsky, Esqs.
P.O. Box 248
103 Cooper Street
Babylon, New York
and by depositing same enclosed in a postpaid properly 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

29th day of December, 1975.







DEPARTMENT OF TAXATION AND FINANCE

HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT BUILDING 9, ROOM 107
STATE CAMPUS

MILTON KOERNER

ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) ~~XXXXXX~~

457-3850

DATED: Albany, New York
December 29, 1975

Long Island Reliable Corporation
88 East Hoffman Avenue
Lindenhurst, New York

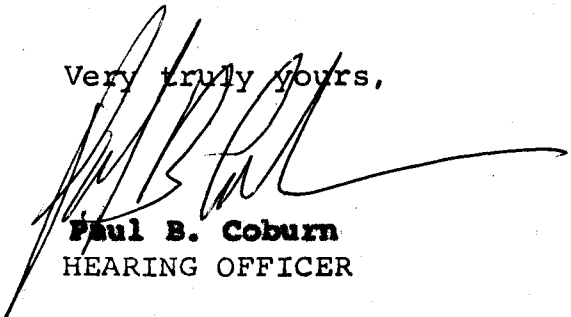
Gentlemen:

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,


Paul B. Coburn
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	:	
LONG ISLAND RELIABLE CORPORATION	:	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 Periods December 1, 1966 through	:	
September 3, 1969.	:	

Applicant, Long Island Reliable Corporation, 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 periods from December 1, 1966 through September 3, 1969. File No. 11-2021312.

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on May 21, 1973, at 1:30 P.M. Applicant appeared by J. Ozias Kaufman, Esq., (Paul S. Bannon, Esq., of counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq. of counsel).

ISSUE

Was applicant, Long Island Reliable Corporation, a purchaser in a sale in bulk of any of the business assets of Qualified Burner Services, Inc.

FINDINGS OF FACT

1. Applicant, Long Island Reliable Corporation, is a domestic corporation organized and existing by virtue of the Business Corporation Law of New York State with its principal offices at 88 East Hoffman Avenue, Lindenhurst, New York.

2. Applicant, Long Island Reliable Corporation, was engaged in the wholesale and retail sale of fuel oil. It did business with Qualified Burner Service, Inc., a domestic corporation engaged in retail sale of oil with offices at 11 Wicks Road, Brentwood, New York. Qualified Burner Service, Inc. became indebted to it in the sum of \$12,892.20. A judgment was entered in said amount in its favor on June 14, 1969. On July 15, 1969, Edwin Grieco, Inc. assigned to it a judgment against Qualified Burner Service, Inc. in the amount of \$8,195.78 creating a total indebtedness of Qualified Burner Service, Inc. to it of \$21,087.98.

3. On September 3, 1969, applicant, Long Island Reliable Corporation, purchased from Qualified Burner Service, Inc. the list of customers and delivery routes serviced by Qualified Burner Service, Inc. consisting of approximately 670 customers together with the name Qualified Burner Service, Inc. and the right to the use of the telephone

number of Qualified Burner Service, Inc. pursuant to a written agreement made on said date. The seller further agreed to assign its current maintenance and service contracts to it. The consideration paid, which was to be determined by future receipts, was to be credited against the judgments.

4. On July 20, 1970, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued by the Sales Tax Bureau, against Qualified Burner Service, Inc. (Seller), Anna Williamson, individually and as president of said seller, and applicant, Long Island Reliable Corporation, as purchaser in the amount of \$12,798.67 plus accrued interest and penalties for the periods from December 1, 1966 through September 3, 1969.

CONCLUSIONS OF LAW

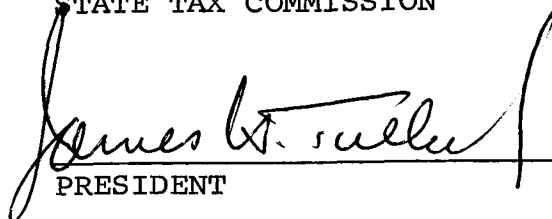
A. That the transaction between applicant, Long Island Reliable Corporation, and Qualified Burner Service, Inc. constituted a sale in bulk of business assets of Qualified Burner Service, Inc. in accordance with the meaning and intent of section 1141(c) of the Tax Law, and therefore, it was liable for unpaid sales taxes due from Qualified Burner Service, Inc. for the periods from December 1, 1966 through September 3, 1969.

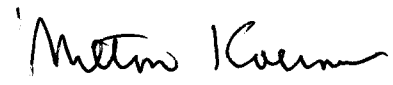
B. That the constitutionality of the laws of the State of New York are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that section 1141(c) of the Tax Law is constitutional to the extent that it relates to the imposition of sales tax liability of Qualified Burner Service, Inc., a seller of business assets in bulk, to applicant, Long Island Reliable Corporation, a purchaser of said business assets.

C. The application of Long Island Reliable Corporation is denied in all respects.

DATED: Albany, New York
December 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER