

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELMWOOD TANK CLEANING CORP.

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

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period Sep. 1, 1967
through August 31, 1970.

State of New York
County of Albany

Martha Funaro , 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 25th day of October , 19 74, she served the within
Notice of Decision (~~on Determination~~) by (~~certified~~) mail upon Elmwood Tank
Cleaning Corp. (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Elmwood Tank Cleaning Corp.
62 West Market Street
Buffalo, New York 14204

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

25th day of October , 19 74

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELMWOOD TANK CLEANING CORP.

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

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period Sep. 1, 1967
through August 31, 1970.

State of New York
County of Albany

Martha Funaro, 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 25th day of October, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Howard Gondree, 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 Gondree, Esq.
Phillips, Brown & Broderick
Ellicott Square Building
Buffalo, New York 14203

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

25th day of October, 1974.

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, 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
October 25, 1974

Elmwood Tank Cleaning Corp.
62 West Market Street
Buffalo, New York 14204

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1139 & 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,

L. Robert Leisner

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	:	
ELMWOOD TANK CLEANING CORPORATION	:	DETERMINATION
for a Revision of a Determination or	:	
for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax	:	
Law for the Period September 1, 1967	:	
through August 31, 1970.	:	

Applicant, Elmwood Tank Cleaning Corporation, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1967 through August 31, 1970.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on October 16, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Phillips, Brown & Broderick (Howard Gondree, Esq.) and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Were rags used by applicant, Elmwood Tank Cleaning Corporation, in its operations, items purchased for resale?

FINDINGS OF FACT

1. The taxpayer, Elmwood Tank Cleaning Corporation, timely filed New York State sales and use tax returns for the period September 1, 1967 through August 31, 1970.

2. A Notice of Determination of sales and use taxes (and penalties) for the period September 1, 1967 through August 31, 1970,

was issued on July 23, 1971, against Elmwood Tank Cleaning Corporation under Notice No. 90,745,904. The aforesaid Notice of Determination was based on applicant's failure to pay use tax when it purchased rags from various manufacturers.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax.

4. Applicant, Elmwood Tank Cleaning Corporation, is in the business of cleaning and repairing industrial petroleum storage tanks. It brings its equipment to the site of the customer's installation and performs all necessary operations at that location.

5. Applicant uses rags in the process of cleaning and repairing the tanks. It purchases the rags from various manufacturers and then bills its customers for them on its invoices. The rags are listed separately on said invoices. Applicant charges sales tax for the rags and remits said tax to the Sales Tax Bureau.

6. The rags are left on the customers' premises at the completion of applicant's work. The customer has the option whether to recycle or to dispose otherwise of the rags.

7. Applicant did not submit proof that it furnished the rag manufacturers with a resale certificate or exemption certificate.

CONCLUSIONS OF LAW

A. That applicant, Elmwood Tank Cleaning Corporation, transferred both title and possession of the rags in question to its customers upon delivery to the job sites. UCC 2-401(2).

B. That the aforesaid rags were purchases for resale and not at retail and are therefore not subject to sales tax.

Sections 1101(b)(4)(i) and 1106 of the Tax Law.

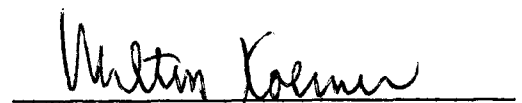
C. That the petition of Elmwood Tank Cleaning Corporation is sustained and the Notice of Determination of sales and use taxes issued on July 23, 1971, is cancelled.

DATED: Albany, New York
October 25, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER