

STATE OF NEW YORK
STATE TAX COMMISSION

*Latham Ready Mix
Sales One
Oct. 28, 1971*

In the Matter of the Petition

of

Latham Ready Mix, Inc.

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 of the
Tax Law for the (Year(s) Aug 1, 1965
through Feb. 29, 1968

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

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 13th day of January , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Latham Ready Mix, Inc. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leo J. Wagner
1 Columbia Place
Albany, New York 12207

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

13th day of January , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Latham Ready Mix, Inc.

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 of the
Tax Law for the (Year(s) Aug. 1, 1965 :
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of January , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Latham

Ready Mix, Inc. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Latham Ready Mix, Inc.
R.D. #1 Fonda Road
Cohoes, New York 12110

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

13th day of January , 1971.

Linda Wilson

Martha Funaro

BUREAU OF LAW
MEMORANDUM

TO: Benjamin Sheber, Sales Tax Bureau
FROM: James Scott
SUBJECT: Transfer of Files

Joseph Auto Co., Inc.
Elmira Coca-Cola Bottling Works, Inc.
✓ Latham Ready Mix, Inc.

The taxpayers in the foregoing matters have failed to institute an Article 78 proceeding within the statutory period of time.

Said files are herewith returned for further administrative disposition.

Associate Attorney

JS:lk
Enc.
cc: Edward Rook
June 14, 1971

In the Matter of the Application
of
LATHAM READY MIX, INC.
for Revision of a Determination of Sales
and Use Taxes under Article 28 of the Tax
Law for the periods August 1, 1965
through February 29, 1968

A formal hearing was held before Lawrence A. Newman, Hearing Officer, on April 29, 1970, in the offices of the State Tax Commission in the City of Albany.

FINDINGS OF FACT

2. On August 16, 1968, the Sales Tax Bureau issued a notice of determination numbered 90,755,555 against the vendor in the amount of \$76.69 plus statutory interest.

The Sales Tax Bureau based its determination on a finding that a charge of \$4 per cubic yard for transportation from October 1, 1967 through February 29, 1968, was excessive and reduced the charge to \$3.50 per yard. The balance of \$.50 per yard was considered an addition to the price of the materials and

additional sales taxes were assessed.

3. The vendor's principal business activity is the sale of mixed concrete which the vendor prepares and delivers to customers on construction sites in its own specialized trucks. The price is measured by the number of cubic yards, the formula used in the mixture, and the location of the delivery site.

4. On the invoices to the customers, commencing October 1, 1967, the amount of \$4 per cubic yard was subtracted from the unit price of the mix and shown as a charge for transportation. Sales taxes are not charged on the segregated amount. The charge is a constant amount regardless of the location of the construction site.

5. On July 5, 1966, the Sales Tax Bureau and the Empire State Sand Gravel and Ready Mix Association, Inc. had mutually agreed that \$3.50 represents a reasonable charge for transportation and that any future billing on this basis would be accepted by the Bureau. The vendor charged transportation at \$3.50 per yard prior to October 1, 1967.

6. The vendor claims that \$4 per yard is a reasonable charge for transportation and relied on a survey of operating cost ratios in the ready mixed concrete industry, which was conducted by the National Ready Mixed Concrete Association. The survey reported a general industry picture, which according to its authors, does not necessarily take into account local situations and individual types of operations.

DETERMINATION

A. The vendor has failed to sustain the burden of disproving the finding of the Sales Tax Bureau that \$3.50 per cubic yard is a reasonable charge for the transportation of ready mixed concrete for the period from October 1, 1967 through February 29, 1968.

B. The notice of determination is found to be correct and is sustained. The application for revision is denied.

DATED: Albany, New York

January 11, 1971

STATE TAX COMMISSION

Norman Gellman
COMMISSIONER

COMMISSIONER

Milton Kerner
COMMISSIONER