

STATE OF NEW YORK
STATE TAX COMMISSION

*McClendon Black Top
Co. Inc.
Sales + Use Tax
(1971)*

In the Matter of the Petition

of

McCLENDON BLACK TOP CO., INC.

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)) periods
August 1, 1965 to November 30, 1966.

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

State of New York
County of Albany

Rae Zimmerman , 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 12th day of August , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon McClendon
Black Top Co., Inc. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: McClendon Black Top Co., Inc.
2115 Third Avenue
Niagara Falls, New York 14305
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

12th day of August , 1971.

Maitha Funnaro

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
McCLENDON BLACK TOP CO., INC. :

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

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)) periods
August 1, 1965 to November 30, 1966.

State of New York
County of Albany

Rae Zimmerman , 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 12th day of August , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Carmen
Caggiano, P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Carmen Caggiano, P.A.
c/o McClendon Equipment Rental
2115 Third Avenue
Niagara Falls, New York 14305
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

12th day of August , 1971.

Martha J. Jurek

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Application | : | |
| of | : | |
| McCLENDON BLACKTOP 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 periods August 1, 1965 to November 30, | : | |
| 1966. | : | |

The applicant applied for revision of determinations of sales taxes for the periods August 1, 1965 through November 30, 1966. A formal hearing was held on October 16, 1969, at the State Office Building at Buffalo, New York, before L. Robert Leisner, Hearing Officer.

The applicant appeared through Carmen Caggiano, Public Accountant, and the Sales Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Whether the purchase of materials for the performance of lump sum construction contracts for governmental and exempt institutions is subject to the sales and use tax.

FINDINGS OF FACT

1. Notices of Determination and Demand for payment of sales and use taxes due, were issued to the applicant on April 4, 1967, under Notice No. 90751497 and identification no. 16-0838806. Demands for hearings were timely filed.

2. The assessment of tax and penalty is based on tax unpaid on purchases of materials which were consumed in performance of work on lump sum contracts of real property improvements which were performed for governmental and exempt institutions.

DETERMINATION

A. Based upon all the evidence adduced, petitioner is subject to the payment of sales tax for the period August 1, 1965 through November 30, 1966, in accordance with the Notice of Determination and Demand for payment of sales and use taxes due dated April 4, 1967.

B. On a lump sum contract, the contractor is ultimately the consumer of the materials purchased and the contractor is the one to bear the burden of the tax which must be paid at the time of purchase of the materials.


C. The taxpayer acted in good faith and the penalties against the taxpayer are cancelled and abated.

D. Pursuant to the Tax Law, interest on the tax shall be added to the total amount due until the date of payment.

DATED: Albany, New York

August 12, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER