

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

C & C PLUMBING & HEATING 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)) 8/1/65 -
5/31/70

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 4th day of December, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon C & C PLUMBING &
HEATING CORP. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: C & C Plumbing & Heating Corp.
195 Sugg Road
Cheektowaga, New York 14225

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

4th day of December, 1972

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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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 4th day of December, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon BERNARD
FERER, ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Bernard Ferer, Esq.
Jacobson, Ferer & Jay
1308 Liberty Bank Bldg.
Buffalo, New York 14202

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

4th day of December, 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
December 4, 1972

C & C Plumbing & Heating Corp.
195 Sugg Road
Cheektowaga, New York 14225

Gentlemen:

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

Please take further notice that pursuant to **sections 1138 and 1243** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing 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

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
C & C PLUMBING & HEATING CORP.	:	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 August 1, 1965 through May 31,	:	
1970.	:	

The taxpayer 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 August 1, 1965 through May 31, 1970.

Formal hearings were held at the offices of the State Tax Commission, Buffalo, New York on April 19, 1972 and April 21, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Bernard Ferer, and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Where a taxpayer has entered into lump sum contracts for capital improvements for tax exempt organizations, and the contracts, papers and surrounding evidence are devoid of any reference to sales tax, were the taxpayer's purchases for materials subject to sales tax?

FINDINGS OF FACT

1. The taxpayer, C & C Plumbing & Heating Corp., timely filed New York State sales and use tax returns for the periods August 1, 1965 through May 31, 1970.

2. A Notice of Determination of deficiencies in sales tax, penalties and interest for the period involved was issued on January 12, 1972, against the taxpayer under Notice No. 90,747,658.

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

4. The hearing related to sales taxes for purchases of materials for the performance of plumbing contracts or subcontracts for capital improvements for the following exempt organizations:

Randall Baptist Church	*NT
Lancaster Presbyterian Church	*NT
Resurrection Church	*NT
St. Philips Church	*NT
St. Pius X	
Maryvale High School	
Ripley High School	
Cheektowaga High School	
St. Barnabas	*NT
St. Philip	*NT
St. Gregory	*NT
Tonawanda High School	
Depew Boys Club	
Clarence Junior High School	
Erie Co. Office Bldg.	
North Collins High School	
School 17	
St. John Seminary	
Seneca Nation	
West Seneca Kiwanis	

(*In the above list of exempt organizations, the symbol NT indicates the instances where the examiner determined that no sales tax was applicable.)

5. The taxpayer's material purchases and work on capital improvements for the Maryvale Senior High School, Ripley Central School, Cheektowaga Central School, the Tonawanda High School, and the Depew Boys Club, were pursuant to lump sum contracts. The contracts are devoid of any reference to sales tax.

6. In examining purchases for the capital improvements for the Clarence Junior High School, the Erie County Office Building, the North Collins High School, School 17, the Seneca Nation, and the West Seneca Kiwanis, the sales tax examiner found the contracts to be lump sum contracts and the materials purchased by the taxpayer subject to sales tax. No contracts for these improvements were presented at the hearing.

7. In examining the capital improvements for St. Pius and St. John's Seminary, the examiner found that the taxpayer had engaged rental equipment for digging and earth moving to perform the contracts and there was tax due on this rental equipment. The taxpayer contended that because an operator was provided that this was labor and not taxable.

8. Throughout the period in question, the taxpayer's officers inquired at the district office as to whether the particular contract qualified for a sales tax exemption. Whether timely answers or consistent answers were given or how or when or in what instances the taxpayer posed inquiries is uncertain. It appears evident that the taxpayer did make a number of reasonable inquiries and further that the taxpayer could not cease all operations to be absolutely certain about every aspect of the Sales Tax Law.

CONCLUSIONS OF LAW

A. In those instances where the contract for capital improvements for exempt organizations contained specific reference to the fact that the institutions were tax exempt and no sales tax was to be charged the determination of the Sales Tax Bureau that there was no sales tax on the taxpayer's purchases of materials is correct.

In those instances where the contracts for capital improvements for exempt organizations were broken down into labor, or time, and materials contracts the determination of the Sales Tax Bureau is correct that there was no sales tax due on the purchases of materials for the improvements by the taxpayer. (See determinations of "No Tax", paragraph 4 above.) Sweet Associates v. Gallman 29 N.Y. 2d 902.

B. In the instances (paragraph 5 above where the contracts for capital improvements for exempt institutions were lump sum contracts and were devoid of any reference to sales tax, the purchases of materials by the taxpayer were subject to the sales tax.

C. In the instances (paragraph 6 above) where the contracts for capital improvements for exempt institutions were determined to be lump sum contracts and the purchases of materials were determined to be subject to sales tax, and no papers or contracts were presented at the hearing, the taxpayer has failed to show any error in the determination of the Sales Tax Bureau.

D. In these contracts (paragraph 7 above) for capital improvements for exempt organizations where the taxpayer hired rental equipment and there was no breakdown for labor, the entire rental is subject to sales tax.

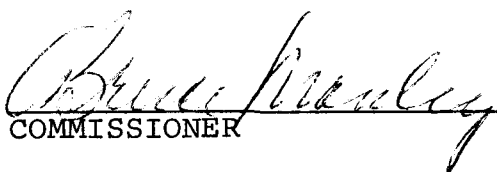
E. The taxpayer made reasonable efforts to determine the taxability of the material purchases and acted in good faith. All of the penalties against the taxpayer are cancelled.

F. The deficiencies in sales tax are sustained. Pursuant to the Tax Law, interest shall be added to the total amount of tax due until paid.

DATED: Albany, New York
December 4, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER