

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DIREEN OPERATING CORP.

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period  
Aug. 1, 1965 - Nov. 30, 1968

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

State of New York  
County of Albany

Lynn Wilson, 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 30th day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon DIREEN OPERATING  
CORP. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Direen Operating Corp.  
1803 Archer Street  
Bronx, New York 10460

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

30th day of March, 1972.

Martha Fucini

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DIREEN OPERATING CORP.

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ Period  
Aug. 1, 1965 - Nov. 30, 1968

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State of New York  
County of Albany

Lynn Wilson, 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 30th day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon GOLDWATER & FLYNN,  
ESQS. (representative of) the petitioner in the within

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

Goldwater & Flynn, Esqs.  
60 East 42nd Street  
New York, New York 10017

Att: Leon Liner, Esq.  
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

30th day of March, 1972.

Martha Flannery

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**March 30, 1972**

**Direen Operating Corp.**  
**1803 Archer Street**  
**Bronx, New York 10460**

**Gentlemen:**

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

Please take further notice that pursuant to **sections 1138 & 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,

**Lawrence A. Newman**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
DIREEN OPERATING CORP. : 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 period from August 1, 1965 through :  
November 30, 1968. :

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Direen Operating Corp. applied for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period from August 1, 1965 through November 30, 1968. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on February 15, 1972. The applicant was represented by Goldwater and Flynn, Esqs. (Leon Liner, Esq., of Counsel). The Sales Tax Bureau was represented by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Whether the receipts from the services performed by the applicant are exempt from sales and use taxes within the meaning and intent of section 1105(c)(5) of the Tax Law.

FINDINGS OF FACT

1. The applicant, Direen Operating Corp., filed New York State and local sales and use tax returns for the period from August 1, 1965 through November 30, 1968.

2. On April 7, 1969, the Sales Tax Bureau issued a notice of determination numbered 90,758,985, in the amount of \$8,973.42, plus statutory penalties and interest covering the period from August 1, 1965 through November 30, 1968.

3. The notice of determination was based on a finding by the Sales Tax Bureau that the receipts for services performed by the applicant for the Ardea Realty Corp. are subject to the sales and use tax. On May 20, 1969, the applicant filed a timely application for revision of the determination.

4. The applicant and the Ardea Realty Corp. are wholly owned by the same stockholder. Ardea owns and operates 22 multiple dwelling buildings. Some of the buildings also contain storefronts. Ardea employs 16 superintendents for the cleaning of the buildings and collection of refuse.

5. Since 1952, the applicant engaged additional maintenance men to assist in the maintenance and upkeep of the properties owned by Ardea. In the year 1964, this arrangement was incorporated into a written understanding between Direen and Ardea.

At a flat price of \$4.60 per hour per man, Direen was to provide labor to perform all interior cleaning and custodial services, but not capital repairs, as directed by Ardea. Direen was to pay for direct and fringe labor costs, and insurance. Ardea would furnish any needed materials. Direen would submit weekly bills for the labor provided.

6. During the period in issue, outside contractors were employed for window cleaning, elevator maintenance, boiler repairs and any extensive repair work. Included in the services furnished by Direen to Ardea were minor plumbing, carpentry work, and window repairs.

Invoices for the months of June, July and August, 1968, contained subtotals for hours spent on plumbing, carpentry and general work.

7. The Legislature intended that interior cleaning would be limited to ordinary janitorial services, such as dusting, cleaning floors and cleaning public halls and lavatories, and that maintenance would be similarly limited to janitorial services, such as waxing floors, waxing venetian blinds and oiling door hinges. Since janitorial services ordinarily also encompass such things as dusting, cleaning and waxing desks, chairs and other office furniture, such services would also be exempt.

If a cleaning and maintenance contract whose primary purpose is to provide janitorial services also includes taxable maintenance and service, the latter transactions will be taxable. Therefore, if the bill to the customer or the contract separately states the taxable items the tax will only be based on them, and the nontaxable items will be exempt.

However, if one price is charged for all services, including taxable maintenance and services, the entire charge will be subject to tax.

8. An indeterminate portion of the services rendered and charged by Direen Operating Corp. is other than interior cleaning and maintenance services within the meaning and intent of section 1105(c)(5) of the Tax Law.

#### DETERMINATION

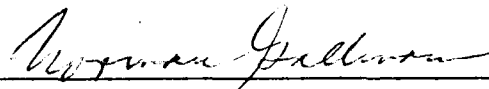
A. The receipts from the services performed by the applicant are not exempt from the sales and use taxes within the meaning and intent of section 1105(c)(5) of the Tax Law.

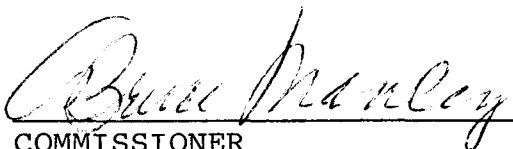
B. Statutory penalties and interest shall be reduced to an amount equalling simple interest at 6% per annum to date of payment.

C. The notice of determination is sustained, and the application for revision of the determination or for refund is denied, except as stated in item(B) above.

DATED: Albany, New York  
*March 30, 1972*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER