

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
McCLENDON EQUIPMENT RENTAL 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 & 29 of the
Tax Law for the ~~(Year(s))~~ period 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 6th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon McClendon
Equipment Rental, 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 Equipment Rental, Inc.
2115 Third Avenue
Niagara Falls, N.Y. 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

6th day of April, 1972.

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

McCLENDON EQUIPMENT RENTAL, 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 & 29 of the
Tax Law for the ~~(year)~~ period 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 6th day of April, 1972 she served the within
Notice of Decision (or Determination) by (certified) mail upon Carmen Caggiano
(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

2115 Third Avenue
Niagara Falls, N.Y. 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

6th day of April, 1972

Lynn Wilson

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 6, 1972

McClendon Equipment Rental, Inc.
2115 Third Avenue
Niagara Falls, N.Y. 14305

Gentlemen:

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

Please take further notice that pursuant to section(s)
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 relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
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	:	
	:	
McCLENDON EQUIPMENT RENTAL, INC.	:	
	:	
for Revision of a Determination or	:	DETERMINATION
for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the	:	
Tax Law for the period August 1,	:	
1965 to November 30, 1966.	:	
	:	

The applicant applied for a revision of a determination or for refund of sales and use taxes for the period August 1, 1965 to November 30, 1966. Formal hearings were held on September 17, 1970 at 9:30 a.m. at the State Office Building before Robert Leisner, Hearing Officer.

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

FINDINGS OF FACT

1. Notices of Determination and Demand for payment of Sales and Use Taxes due, were issued to the applicant on March 29, 1970 under notice number 90,751,454 and identification number NY 7031901 Demands for hearing were timely filed.

2. The principal contention of the taxpayer was that no tax of McClendon Equipment Rental, Inc. was due on equipment used by McClendon Blacktop Co., Inc. The McClendon Blacktop Co., Inc. originally purchased the equipment and paid tax on the same.

3. Subsequently, the McClendon Blacktop Co., Inc. transferred equipment to the McClendon Rental Inc. without any consideration.

4. McClendon Equipment Rental, Inc. allowed McClendon Blacktop Co., Inc. to use McClendon Equipment Rental's equipment free of charge.

McClendon Equipment Rental, Inc. also rented equipment to third parties on which the sales tax was \$1,308.06.

5. The Sales Tax Bureau took the position that McClendon Blacktop Co., Inc. should pay a sales tax on the fair market value of the rental, of equipment of McClendon Rental, Inc. The applicant took the position that McClendon Blacktop Co., Inc. had originally purchased the equipment, and paid a sales tax on the equipment, and that no sales tax was due on equipment used free of charge from McClendon Equipment Rental, Inc.

6. The applicant applied for abatement of penalties.

DETERMINATION

A. McClendon Blacktop Inc. had already paid a sales tax on the equipment and it had no legal obligation to pay another sales tax to McClendon Rental, Inc. after it transferred the equipment to McClendon Equipment Rental, Inc. free of charge.

B. McClendon Equipment Rental, Inc. had the duty to collect sales taxes on the rentals of equipment to third parties. The deficiency in sales tax is sustained in the amount of \$1,318.06.

C. The McClendon corporations acted in good faith in this matter and all penalties 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

April 6, 1972

STATE TAX COMMISSION

Norman Lieberman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koenig
COMMISSIONER