

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WAXLIFE, U.S.A., INC.

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
February 1, 1973 through August 31, 1973.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7th day of March , 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Waxlife, U.S.A., Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Waxlife, U.S.A., Inc.
Box 511
Lake George, New York 12845

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~of the~~ 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

7th day of March , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WAXLIFE, U.S. A., INC.

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period (X) :
February 1, 1973 through August 31, 1973.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7th day of March, 1977, he served the within
Notice of Determination by ~~(certified)~~ mail upon Francis T. Roach

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Francis T. Roach, Esq.
50 Colvin Avenue
Albany, New York 12206

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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

7th day of March, 1977.

Bruce Batchelor

James T. Roach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 7, 1977

TELEPHONE: (518) **457-1723**

Waxlife, U.S.A., Inc.
Box 511
Lake George, New York 12845

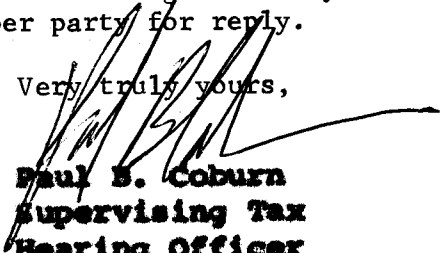
Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

A formal hearing was held before Julius E. Braun, Hearing Officer, at the office of the State Tax Commission, Bldg. #9, State Campus, Albany, New York, on May 12, 1976 at 10:15 A.M. Applicant appeared by Frances T. Roach, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard H. Kaufman, Esq. of counsel).

ISSUES

I. Whether the applicant is liable for New York State sales and use taxes in the purchase of advertising material.

II. Whether the applicant is entitled to a refund of New York State sales tax upon a capital improvement.

FINDINGS OF FACT

1. On September 6, 1974, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales

and Use Taxes Due against applicant, Waxlife, U.S.A., Inc., in the amount of \$8,642.86, plus penalty and interest of \$1,823.61, for a total of \$10,466.47. On September 15, 1975, the Sales Tax Bureau issued a Notice of Assessment Review to reflect certain adjustments. The adjusted tax due was \$1,836.00, the adjusted penalty and interest was \$488.12, with \$573.70 paid on the assessment, leaving a balance due of \$1,750.42.

2. Applicant, Waxlife, U.S.A., Inc., is a corporation that is part of an amusement park complex which contains various attractions, displays and rides. As part of the admission price customers are given a brochure that pictures, describes and maps the sites, which brochures are available upon request to the general public.

3. On April 3, 1973 applicant, Waxlife, U.S.A., Inc. accepted a contract for the construction of the roof on the wax museum. The contract specified five various materials to be used, and a guarantee of two years. The invoice stated "sales tax included, \$11,112.00".

4. Applicant, Waxlife, U.S.A., Inc., cooperated with the Sales Tax Bureau and acted in good faith.

CONCLUSIONS OF LAW

A. That the free distribution of advertising and informational brochures to customers is not a sale by the applicant, Waxlife, U.S.A., Inc., according to the meaning and intent of section 1101 of the Tax Law. However, applicant was subject to compensating use tax upon these materials, according to the meaning and intent of section 1110 of the Tax Law.

B. That the construction of a roof upon applicant, Waxlife, U.S.A., Inc.'s wax museum constituted a capital improvement pursuant to section 1.263(a)-1 of the Internal Revenue Service Regulations.

However a capital improvement is not a tax-exempt transaction. The contractor is responsible for sales tax on the materials used in the project. The fact that the contractor on the invoice labelled the cost of materials as including sales tax is insufficient to allow a refund to applicant.

C. That the application of Waxlife, U.S.A., Inc., is granted to the extent that the penalty and interest above minimum is waived; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 6, 1974 and adjusted September 15, 1975 and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER