

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SCHWARTZ CHEMICAL COMPANY, INC. :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~XXXX(s) or~~ Period(s) :
June 1, 1967 through May 31, 1970.

State of New York
County of Albany

Bruce Batchelor , 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 7th day of March , 19 77, ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon Schwartz Chemical
Company, Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Schwartz Chemical Company, Inc.
50-01 Second Street
Long Island City, New York 11101
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~~
~~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
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**

✓
Schwartz Chemical Company, Inc.
50-01 Second Street
Long Island City, New York 11101

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 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,

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SCHWARTZ CHEMICAL COMPANY, 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 Period June 1, 1967	:	
through May 31, 1970.	:	

Applicant, Schwartz Chemical Company, Inc., located at 50-01 Second Street, Long Island City, New York 11101, has filed an application 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 June 1, 1967 through May 31, 1970. (Notice No. 90,745,560).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on June 8, 1976, at 2:45 P.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The applicant appeared by Abraham Schwartz, President. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Did the audit techniques and projection methods used by the Sales Tax Bureau accurately reflect the applicant's sales and use tax liability?

FINDINGS OF FACT

1. The applicant, Schwartz Chemical Company, Inc., timely filed New York State sales and use tax returns for the period June 1, 1967 through May 31, 1970.

2. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due, including penalties, for the period previously referred to was issued on May 26, 1971 against said applicant under Notice No. 90,745,560 in the amount of \$1,844.75.

3. On October 22, 1974, the State Tax Commission issued a warrant, as judgment creditor, against Schwartz Chemical Company, Inc. and officers in the amount of \$1,844.75. The warrant was wholly satisfied on December 4, 1974 upon the receipt of full payment of said amount.

4. Applicant protested the assessment in a letter to State Tax Commission dated June 24, 1971.

5. Applicant, Schwartz Chemical Company, Inc., manufactured and sold paints and adhesives essentially for resale. The audit of applicant's books and records resulted in a deficiency in four categories:

(a) The examination of nontaxable sales invoices for the period June 1 through June 10, 1969, indicated an error rate of .079% based on applicant's failure to justify nontaxable sales

with acceptable resale certificates. The error rate was reduced to .04% in consideration of the recurring nature of the sales and the type of customers with whom applicant conducted his business. This phase of audit resulted in an assessment of \$362.50 in sales tax.

(b) Applicant was assessed \$40.33 in use tax as the amount due on samples given away.

(c) During the audit period, applicant extensively renovated his premises. He engaged several contractors to improve his property and paid them on time and material basis. An assessment of \$473.96 was asserted against the applicant, as use tax, on the materials portion of the time and materials contracts. These improvements were realized prior to September 1, 1969. Additional use tax was assessed in the amount of \$13.62 on the outright purchase of certain fixed assets upon which an insufficient tax or no tax had been paid.

(d) The examination of expense purchases for the month of June, 1969 resulted in an assessment of \$511.93, representing the projection of errors based on applicant's failure to pay tax on expense and maintenance items. Examiner included an item of \$105.00 designated as an automobile repair. Applicant testified this item was unique and extraordinary. The charge was for repair and repainting of an automobile used by one of the officers.

CONCLUSIONS OF LAW

A. That the deficiencies determined against the applicant for (1) sales tax on disallowance of nontaxable sales, (2) for use tax on samples, (3) for use tax on materials purchased through time and materials contracts for the improvement of real property and (4) for use tax due on fixed asset purchases have been determined through proper and accepted audit procedures and in accordance with Articles 28 and 29 of the Tax Law.

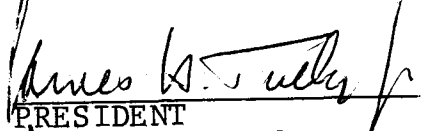
B. That the use tax on expense purchases be modified by deleting the nonrecurring automobile repair expense from the recurring expense items used in the projection of use tax on expense purchases.

C. That the applicant acted in good faith and the penalty is cancelled.

D. That the application of Schwartz Chemical Company, Inc. is granted to the extent that the use tax due be reduced by removing the nonrecurring expense item from the projection, and that the Sales Tax Bureau is hereby directed to refund the amount of such reduction together with such interest as may be lawfully owing.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER