

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM D. POWERS

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 & 29 of the :
Tax Law for the ~~Year(s) or~~ Period(s) :
2/28/74 and 8/31/74.

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 5th day of April , 19 77, ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon William D. Powers

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. William D. Powers
1624 New York Post Road
Castleton, New York

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

5th day of April , 1977

Bruce Batchelor

Janet Buck

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM D. POWERS

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For a Redetermination of a Deficiency or :
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of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~XXXXXX~~ Period (s) :
2/28/74 and 8/31/74.

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 5th day of April , 1977, he served the within
Notice of Determination by ~~certified~~ mail upon Douglas P. Rutnik, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Douglas P. Rutnik, Esq.
112 State Street, Suite 1320
Albany, NY 12207

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

5th day of April , 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

April 5, 1977

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

Mr. William D. Powers
1624 New York Post Road
Castleton, New York

Dear Mr. Powers:

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: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WILLIAM D. POWERS	:	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 February 28, 1974 and	:	
August 31, 1974.	:	

Applicant, William D. Powers, residing at 1624 New York Post Road, Castleton, New York, 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 February 28, 1974 and August 31, 1974. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on June 15, 1976, at 2:45 P.M. Applicant appeared by Douglas P. Rutnik, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Solomon Sies, Esq. of counsel).

ISSUE

Is the applicant a "person required to collect tax" as defined in section 1131(1) of the Tax Law and thereby personally liable for the payment of sales tax?

FINDINGS OF FACT

1. On April 11, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use taxes due against the applicant, William D. Powers, in the amount of \$1,083.71 for the period ending February 28, 1974 and August 31, 1974. The assessment was issued in accordance with sections 1131(1) and 1138(a) of the Tax Law, holding the applicant, William D. Powers, personally liable for sales tax as an officer of Termco Service Company.

2. Applicant, William D. Powers, began his employment with Terminal Service Company of Cincinnati, Ohio, in 1968. On June 15, 1972, Terminal Service Company formed a wholly owned subsidiary known as Termco Service Co. Termco was engaged in a trash removal service in the Albany, New York area.

3. Applicant, William D. Powers, was designated as vice-president of the newly created corporation; however, he did not own any of its capital stock nor was he an employee. He was given the title of vice-president by his employer because Termco needed a corporate officer in the Albany area, and he offered them his physical presence.

4. Applicant, William D. Powers, signed as vice-president of Termco Service Co., a Certificate of Registration with the Sales Tax Bureau on June 15, 1972, but did so at the request of his employer.

5. Applicant, William D. Powers, signed a New York State and local sales and use tax return for the period ending November 30, 1972, at the request of his employer, but did not sign any other sales tax returns.

6. Applicant, William D. Powers, although having authority to sign checks for Termco Service Co., issued checks only when instructed and to those parties so designated by the officers of Termco Service Co. He made no deposits to the account of Termco Service Co.

7. Applicant, William D. Powers, was not responsible for the collection of accounts receivable which would have included the collection of sales tax where applicable.

CONCLUSIONS OF LAW

A. That the applicant, William D. Powers, was merely a titular vice-president of Termco Service Co. and is not a "person required to collect tax" as defined in section 1131(1) of the Tax Law, and is not personally liable as an officer of Termco Service Company under duty to collect or pay the sales tax as imposed under Articles 28 and 29 of the Tax Law.

B. That the application of William D. Powers is granted and the Notice of Determination and Demand for payment of sales and use taxes due, issued April 11, 1975, is cancelled.

DATED: Albany, New York
April 5, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER