

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

ORMSBY HAULERS, <sup>of</sup> INC., KENNETH ORMSBY,  
RAYMOND ORMSBY and ELIZABETH ORMSBY  
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 ~~XXXX(s) or~~ Period(s) :  
September 1, 1971 to May 31, 1975.

AFFIDAVIT OF MAILING

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 14th day of April , 1977, ~~she~~ served the within  
Notice of Determination by (~~certified~~) mail upon Ormsby Haulers, Inc.,  
Kenneth Ormsby,  
Raymond Ormsby &  
Elizabeth Ormsby  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Ormsby Haulers, Inc.  
Kenneth Ormsby, Raymond Ormsby & Elizabeth Ormsby  
41 Loboef Street  
Tupper Lake, New York 12986  
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~~  
~~XXXX~~) 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

14th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ORMSBY HAULERS, INC., KENNETH ORMSBY,  
RAYMOND ORMSBY and ELIZABETH ORMSBY  
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)~~ Period(s) :  
September 1, 1971 to May 31, 1975.

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 14th day of April , 19 77, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon David W. Johnson, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: David W. Johnson, Esq.  
51 Lake Street  
Tupper Lake, New York 12986

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

14th day of April , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

April 14, 1977

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

Ormsby Haulers, Inc.  
Kenneth Ormsby, Raymond Ormsby & Elizabeth Ormsby  
41 Loboef Street  
Tupper Lake, New York 12986

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,

**Paul E. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
ORMSBY HAULERS, INC., KENNETH ORMSBY, RAYMOND ORMSBY and ELIZABETH ORMSBY	:	DETERMINATION
Individually and as Officers, for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Periods September 1, 1971 to May 31, 1975.	:	

---

Applicants, Ormsby Haulers, Inc., Kenneth Ormsby, Raymond Ormsby and Elizabeth Ormsby, 41 Loboef Street, Tupper Lake, New York 12986, have 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 periods September 1, 1971 to May 31, 1975. (File No. 11802). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, Utica, New York on July 19, 1976 at 1:30 P.M. Applicant appeared by David W. Johnson, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

I. Whether tractors used in applicant Ormsby Hauler, Inc.'s trucking business were subject to New York State sales tax.

II. Whether applicants were responsible for sales tax when the vendor failed to collect same, if above transaction was subject to New York State sales tax.

FINDINGS OF FACT

1. On December 31, 1975, 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 applicants, Ormsby Hauler, Inc., Kenneth Ormsby, Raymond Ormsby and Elizabeth Ormsby, individually and as officers in the amount of \$13,225.24 plus penalty and interest in the amount of \$5,468.84 for a total sum of \$18,694.08. On March 3, 1976, the Sales Tax Bureau issued a Notice of Assessment Review, which adjusted the assessment because of a partial payment, to a revised tax due of \$12,805.24 plus penalty and interest of \$5,594.65, for a total sum of \$18,399.89.

2. Applicant, Ormsby Haulers, Inc., was formed and incorporated in September 1971 by Kenneth Ormsby, Raymond Ormsby and Gerry Ormsby, following the death of a brother, Warren Ormsby. Their principal customer was Elliott Hardwood for whom they hauled various types of lumber. In 1971, following a fatal accident, involving Warren Ormsby, the brothers were required by Elliott Hardwood to incorporate and secure their own insurance coverage. Within a year Gerry Ormsby sold his share to the remaining two brothers. Raymond Ormsby and Kenneth Ormsby owned their own tractors and each was responsible for its upkeep, gasoline and insurance. They turned over their trailers however, to the corporation. Every week Elliott Hardwood paid Ormsby Haulers, Inc. for loads hauled and delivered. Ten percent of the check would go to the upkeep and insurance on the trailers and the remainder would be divided according to the trips made. When necessary a driver was hired and paid a scale rate for a third truck owned by the corporation, Ormsby Haulers, Inc. Kenneth Ormsby and

Raymond Ormsby were covered for insurance purposes under workmen's compensation as employees of their corporation. Their basic pay was \$160. each per week plus a share of the remaining 90%, depending on trips actually made. The corporate ledger set up by their accountant, listed receipts and disbursements. Payments to the brothers were listed under "truck rental" which was later changed to "hauling". They would respond to a phone call made to the home of either Kenneth Ormsby or to Raymond and Elizabeth Ormsby by a customer. Elizabeth Ormsby was their secretary and did whatever was necessary for the corporation.

3. Raymond Ormsby and Gladys Ormsby and Kenneth Ormsby filed Schedule C's with their own yearly income tax returns for the years in issue, wherein they listed their own receipts for trucking. Each deducted business expenses and depreciation of their respective vehicles.

4. Applicant, Ormsby Haulers, Inc., in the years in issue filed a franchise tax return and, withheld income tax from various other employees hired when needed.

5. A sales tax was not charged Ormsby Haulers, Inc., nor was one collected by Kenneth Ormsby and/or Raymond Ormsby for the use of their tractors during the periods in issue.

6. Kenneth Ormsby, Raymond Ormsby and Elizabeth Ormsby were responsible officers of Ormsby Haulers, Inc., during the periods in issue.

7. Copies of checks to the Sales Tax Bureau on behalf of applicant, Ormsby Haulers, Inc., indicated payments of \$840.00 on March 8, 1975 and \$142.80 on March 24, 1976 for the balance due for sales tax and interest on the sale of a tractor and trailer.

CONCLUSIONS OF LAW

A. That the transaction wherein applicant Ormsby Haulers, Inc., hired independent drivers and their tractors to haul wood materials for their customers was a sale within the meaning and intent of section 1101(b)(5) of the Tax Law.

B. That the rental of the above vehicles by applicant, Ormsby Haulers, Inc., was subject to the New York State sales tax within the meaning and intent of section 1105(a) of the Tax Law.

C. That the applicant, Ormsby Haulers, Inc., as a customer is obligated for the payment of New York State sales taxes whenever the person required to collect the same has failed to do so within the meaning and intent of section 1133(b) of the Tax Law.

D. That applicants, Ormsby Haulers, Inc., Kenneth Ormsby, Raymond Ormsby and Elizabeth Ormsby had reasonable cause for not paying New York State sales tax for the periods in issue, and therefore the penalty and additional interest assessed is waived.

E. That the application of Ormsby Haulers, Inc., Kenneth Ormsby, Raymond Ormsby and Elizabeth Ormsby is granted to the extent of cancelling the penalty and additional interest imposed, and of crediting the amount of \$982.80 already paid; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice and Demand for Payment of Sales and Use Taxes Due issued December 31, 1975 and adjusted March 3, 1976; and, that except as so granted the application is in all other respects denied.

DATED: Albany, New York  
April 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER