

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MONTFORT BROTHERS, INC., FISHKILL TRUCKING
CORPORATION and JOHN M. MONTFORT

AFFIDAVIT OF MAILING

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)~~ :
June 1, 1967 through February 29, 1972

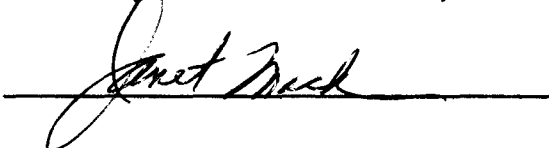
State of New York
County of Albany

Violet Walker, 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 24th day of June, 1977, she served the within
Notice of Determination by ~~(represented)~~ mail upon Montfort Brothers, Inc.
Fishkill Trucking Corporation and John M. Montfort
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Montfort Brothers, Inc., and
John M. Montfort
Fishkill Trucking Corporation
Elm Street, Fishkill, New York 12524
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

24th day of June, 1977.





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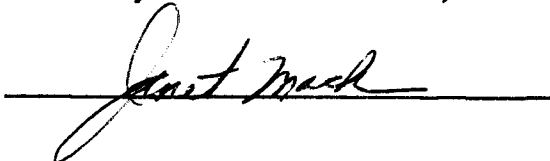
State of New York
County of Albany

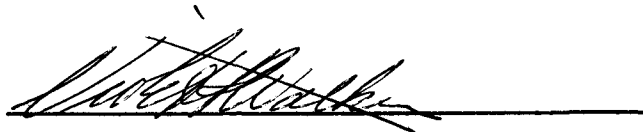
Violet Walker, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of June, 1977, she served the within
Notice of Determination by (~~certified~~) mail upon Russell E. Aldrich, Esq.
and Albert P. Roberts, Esq.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Russell E. Aldrich and
Albert P. Roberts, Esq.
21 Davis Avenue
P.O. Box 3329, Poughkeepsie, New York 12603
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

24th day of June, 1977.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 24, 1977

ADDRESS YOUR REPLY TO

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

Montfort Brothers, Inc., and
John M. Montfort
Fishkill Trucking Corporation
Elm Street
Fishkill, New York 12524

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:

FINDINGS OF FACT

1. On May 27, 1971, 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, Montfort Brothers, Inc. and John Montfort, individually and as officer, in the amount of \$26,560.74, plus penalty and interest of \$6,879.52, for a total of \$33,440.26 for the period of June 1, 1967 to November 30, 1970. After adjustments by the Sales Tax Bureau, it was calculated that a total of \$26,695.59 was due. This amount was paid on December 15, 1972.

2. On March 17, 1971, 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, Fishkill Trucking Corporation, in the amount of \$4,507.65, plus penalty and interest of \$787.47, for a total of \$5,295.12 for the period December 1, 1967 through November 30, 1970.

3. On March 9, 1973, 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, Fishkill Trucking Corporation, in the amount of \$9,190.65, plus penalty and interest of \$1,611.61, for a total of \$10,802.26 for the period December 1, 1970 to February 29, 1972, less a payment credit of \$3,868.23. This left a balance of \$6,934.03.

4. The Southern Dutchess Sand and Gravel, Inc. processed sand and gravel used in the cement and cement making processes

for applicant, Montfort Brothers, Inc., a corporation that primarily manufactured concrete building blocks. Applicant, Fishkill Trucking Corp. provided the trucking for these materials. Applicant, John Montfort, was the president and sole stockholder of all three corporations, and personally ran all the enterprises. For income tax purposes, the corporations had chosen to take the Sub-Chapter "S" election from which John Montfort derived his income. All three corporations shared the same office.

5. Applicant, Fishkill Trucking Corporation, on premises adjacent to Montfort Brothers, Inc., maintained their plant with its fifteen employees consisting of truck drivers and mechanics. It prepared and remitted quarterly payroll taxes, monthly New York State withholding returns, quarterly state unemployment insurance returns, and prepared disability benefits. It also paid special franchise tax (an assessment levied against a transportation corporation), truck mileage tax, diesel fuel tax and additional franchise tax predicated on net assets and equipment stock. The entire operation was under the control and direction of its president and sole stockholder, applicant, John Montfort.

6. Applicant, Fishkill Trucking Corporation, billed Montfort Brothers Inc., Southern Dutchess Sand and Gravel, Inc. and others on a per unit or per load basis for delivery.

7. Applicants do not contest other sales and use taxes which, therefore, are not in issue. It was also stipulated that the parties would resolve the mathematics after a resolution of the main issue.

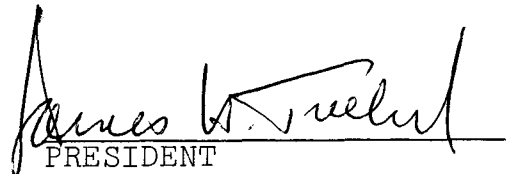
CONCLUSIONS OF LAW

A. That the services supplied by Fishkill Trucking Corporation to Montfort Brothers, Inc. and others, were transportation services and not rental of transportation equipment within the meaning and intent of section 1101(b)(5) of the Tax Law. Therefore, the charges for said services were not subject to sales tax.

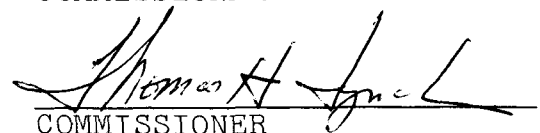
B. That the applications of Montfort Brothers, Inc., Fishkill Trucking Corporation and John Montfort, individually and as an officer is granted to the extent set forth in paragraph "A"; that the Sales Tax Bureau is hereby directed to accordingly modify the notices of determination and demand for payment of sales and use taxes due issued March 17, 1971, May 27, 1971 and March 9, 1973; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York
June 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER