

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARION CENTRAL SCHOOL DISTRICT #1

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)~~
September 29, 1970 to December 11, 1972.

State of New York
County of Albany

Marsini Donnini, 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 22 day of August, 1977, she served the within
Notice of Decision by ~~(XXXXXX)~~ mail upon Marion Central
School District #1 ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Marion Central School District #1
Warner Road
Marion, New York 14505

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

22nd day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARION CENTRAL SCHOOL DISTRICT #1

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 ~~XXXXXX~~ Period(s) :
September 29, 1970 to December 11, 1972.

State of New York
County of Albany

Marsini Donnini, 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 22 day of August, 1977, she served the within
Notice of Decision by ~~XXXXXXXXXX~~ mail upon Robert L.
Purchase, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert L. Purchase, Esq.
20 North Main Street
Marion, New York 14505
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

22nd day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 22, 1977

Marion Central School District #1
Warner Road
Marion, New York 14505

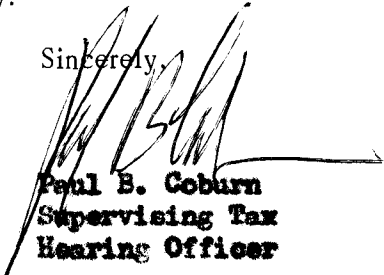
Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1139 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MARION CENTRAL SCHOOL DISTRICT #1	:	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 Periods September 29, 1970 to	:	
December 11, 1972.	:	

Applicant, Marion Central School District #1, Warner Road, Marion, New York 14505, 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 29, 1970 to December 11, 1972. (File No. 11811).

A formal hearing was scheduled before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on March 8, 1977, at 2:45 P.M. Prior to the hearing, applicant's representative, Robert L. Purchase, Esq., waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision, after due consideration of said record.

ISSUE

Whether applicant is entitled to a refund of sales tax paid on materials used in a contract for the alteration and renovation of the Marion Elementary School.

FINDINGS OF FACT

1. On September 29, 1970, applicant, Marion Central School District #1, entered into a contract with William Nassivera & Son for general construction work, in the alteration and renovation of the Marion Elementary School, at a cost of three hundred forty-one thousand seven hundred and sixty-two dollars, (\$341,762.00). The plans, specifications, information for bidders and addenda were made part of their contract, and the contractor was "to furnish and provide for such work all materials of the best quality, unless some other quality is expressly set forth in the specifications to furnish labor, including labor and material incidental thereto including thereby all transportations, apparatus, scaffolding, and utensils necessary and necessary labor for the use thereof, unless it is particularly stated in the specification that materials and labor are to be furnished or done by others."

In the provision relating to extra work and the basis for determining changes in the cost of the work, paragraph 8-a(2)

states "an acceptable lump sum proposal - a lump sum proposal mutually agreed upon by the Board of Education and the Contractor."

2. On April 3, 1973, applicant, Marion Central School District #1, sought refund of \$13,030.32 for sales taxes paid by the contractor, and charged to and paid by the Marion Central School District to the contractor.

3. On June 5, 1975, the Sales Tax Bureau denied applicant, Marion Central School District #1's refund of sales tax on the grounds that the contract was (a) a lump-sum construction contract, (b) that there was no indication that it was meant to be a time and material contract and (c) that the contract made no mention of tax exemption.

4. Applicant, Marion School District #1, is an exempt organization for the payment of sales and use taxes.

CONCLUSIONS OF LAW

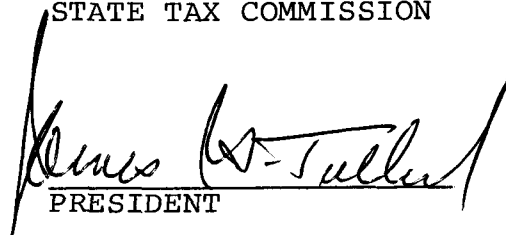
A. That the contract entered into by applicant, Marion Central School District #1, with contractor William Nassivera & Son was a lump-sum contract which did not contain provision for the sale of material separate from the charge for labor and a clause for the passage of title to the material separate to applicant, an exempt organization prior to installation; therefore, applicant is not entitled to a refund for sales tax

paid on said materials according to the meaning and intent of section 1115(a)(15) of the Tax Law as of September 29, 1970.

B. That the application of Marion Central School District #1 for a refund of sales tax paid is denied.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER