

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LANCASTER DEVELOPMENT, 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 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~ :
June 1, 1968 through February 28, 1971.

State of New York
County of Albany

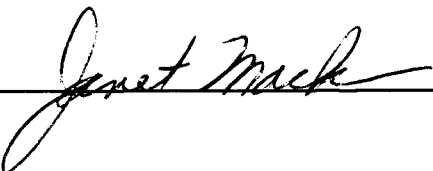
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of October , 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Lancaster Development,
Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Lancaster Development, Inc.
P.O. Box 271
Cobleskill, New York 12043

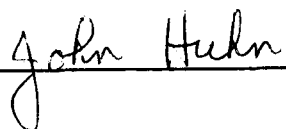
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~XXXXXX~~ 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

3rd day of October , 1977.







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

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

October 3, 1977

Lancaster Development, Inc.
P.O. Box 271
Cobleskill, New York 12043

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 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,

Joseph Chyrywat
Hearing Examiner

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Taxpayer's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
LANCASTER DEVELOPMENT, 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, 1968 through	:	
February 28, 1971.	:	

Applicant, Lancaster Development, Inc., P.O. Box 271, Cobleskill, New York 12043, 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, 1968 through February 28, 1971 (File No. 01476).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 25, 1977 at 2:45 P.M. Applicant appeared by K.F. Burgin, Secretary-treasurer of Lancaster Development, Inc. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether certain payments made by applicant, Lancaster Development, Inc., were for taxable truck rentals or for purchases of non-taxable transportation services.

FINDINGS OF FACT

1. Applicant, Lancaster Development, Inc., a contractor, purchased materials such as asphalt and gravel from manufacturers, and then contracted with independent truckers for delivery of these materials to job sites.

2. Applicant, Lancaster Development, Inc., did not instruct the drivers as to the route they should follow in their delivery. Applicant's only control over the truckers was to tell them where and when to load the trucks and where to deliver the freight. The independent truckers were paid by applicant on either an hourly basis for hours actually worked or on a per ton basis.

3. The field audit findings of the Sales Tax Bureau, which are reflected in the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 17, 1971, also contained adjustments for items not at issue here.

CONCLUSIONS OF LAW

A. That applicant, Lancaster Development, Inc., did not exercise sufficient dominion, control and direction over the use of the trucks and of the drivers and, therefore, had not rented the trucks, but rather had purchased nontaxable transportation services.


B. That the Sales Tax Bureau is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 17, 1971, so as to reflect the nontaxability of the purchased transportation services.

C. That the application of Lancaster Development, Inc. is granted to the extent of reducing the amount of sales tax due resulting from the purchase of transportation services, and that, except as so granted, the application is in all other respects denied.

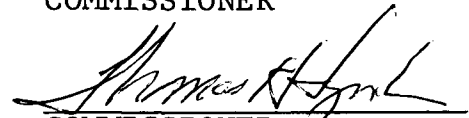
DATED: Albany, New York

October 3, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER