

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

A.F. LEHMANN CONSTRUCTION CO.

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) :
June 1, 1970 through August 31, 1973.

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 7th day of June, 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon A.F. Lehmann
Construction Co. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

A.F. Lehmann Construction Co.
C.P.O. Box L-22 O'Neil Street
Kingston, New York 12401

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)~~
~~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

7th day of June, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

A.F. LEHMANN CONSTRUCTION CO.

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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)
June 1, 1970 through August 31, 1973.

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 7th day of June, 1977, he served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Irving Brizel
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Mr. Irving Brizel
Kantzler, Brizel, Gobel & Berkowitz
55 South Main Street
Liberty, New York 12754
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

7th day of June, 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

June 7, 1977

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

A.F. Lehmann Construction Co.
C.P.O. Box L-22 O'Neil Street
Kingston, New York 12401

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:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
A. F. LEHMANN CONSTRUCTION CO.	:	DETERMINATION
	:	
to Review a Determination or for Refund of	:	
Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Periods June 1,	:	
1970 through August 31, 1973.	:	

A. F. Lehmann Construction Co., C.P.O. Box L-22 O'Neil Street, Kingston, New York, filed an application to review a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1970 through August 31, 1973. (File No. 01479).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on November 4, 1976 at 10:45 A.M.

The applicant appeared by Irving Brizel of the accounting firm of Kantzler, Brizel, Gobel & Berkowitz. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alfred Rubinstein, Esq., of counsel).

ISSUES

1. Whether or not the applicant, A. F. Lehmann Construction Co., was liable for sales and/or use taxes on miscellaneous purchases of materials used in the shop in the course of his business during the audit period.

II. Whether or not the applicant, A. F. Lehmann Construction Co., was liable for sales and/or use taxes and taxable services in connection with the Kenneth L. Wilson State Park construction contract.

III. Whether or not the applicant, A. F. Lehmann Construction Co., was liable for sales and/or use taxes on tools, supplies, rental equipment and materials not incorporated in the completed structure, in connection with the Ulster County Infirmary job.

FINDINGS OF FACT

1. Prior to June 1, 1970, Albert F. Lehmann was and still is doing business as a contractor on construction projects under the firm name and style of A. F. Lehmann Construction Co., having his principal place of business located in Kingston, New York.

2. The applicant filed annual sales tax returns for the years ending May 31, 1971, May 31, 1972 and May 31, 1973, but did not report any taxable sales or purchases on said returns. On April 4, 1974, the Sales Tax Bureau issued a timely Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the periods June 1, 1970 through August 31, 1973 in the amount of \$13,968.44, plus penalty and interest of \$4,086.02, for a total of \$18,054.46. The applicant filed a timely application for a hearing with respect to said determination.

3. During the periods in issue, the applicant was the successful

bidder on two construction projects involving organizations exempt from the sales and compensating use tax, as provided in section 1116 of the Tax Law. One of the projects was with the New York State Department of Environmental Conservation for the construction of a site development at Kenneth L. Wilson State Park near Mt. Tremper, Town of Woodstock, Ulster County. This was a lump-sum contract. Article "36" of the contract provided that "Materials purchased by contractors for use on this project are subject to the New York State sales tax when he buys them. However, since the Department is an agency of the State, no capital improvement certificate is necessary."

4. The other project was with the County of Ulster for the construction of the Ulster County Infirmary. The contract provided in part, that "(c) The purchase by the contractor for the supplies and materials sold hereunder will be a purchase or procurement for resale and therefore not subject to the New York State or compensating use taxes of cities or counties." The contract further provided that "(d) This exemption does not, however, apply to tools, equipment, machinery or other property leased by or to the contractor or a separate contractor or to supplies and materials not incorporated into the completed project..."

5. The sales and/or use taxes assessed, included in the Notice of Determination, consisted of the following categories:

(a). Miscellaneous taxable purchases used in the shop, consisting of tools, repairs to equipment, supplies, fuel, etc.	\$3,620.88
(b). Construction materials used on Kenneth L. Wilson State Park job subject to tax pursuant to contract.	1,365.43

(c) Taxable services on the Ulster Infirmary job consisting of rental equipment, fuel and materials not incorporated into the completed project. \$ 1,755.84

(d) Taxable services on the State Park job consisting of rental equipment and machinery, tools, fuel and supplies and material not incorporated into the completed project. 7,226.29
\$ 13,968.44

The Sales Tax Bureau held the Ulster County Infirmary project to be exempt from sales tax or compensating use tax on materials incorporated into the completed project.

6. The applicant cooperated with the Sales Tax Bureau and acted in good faith. The applicant's failure to pay any tax herein is excusable.

CONCLUSIONS OF LAW

A. That the interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law be, and the same are hereby cancelled.

B. That the applicant was liable for sales tax on the miscellaneous purchases of tools, supplies, repairs to equipment, fuel, etc., since the same constituted a retail sale within the intent and meaning of section 1101(b)(1)(4) and section 1105(b) of the Tax Law.


C. That the applicant, pursuant to his agreement with the New York State Department of Environmental Conservation, was liable for sales tax on materials purchased for use on the Kenneth L. Wilson State Park project and for rental equipment, fuel, etc., used in connection with said project.

D. That the applicant was liable for sales and/or use tax with respect to materials, supplies, etc. on the Ulster County Infirmary project, as more fully set forth in Finding of Fact "5(c)".

E. That the application of A. F. Lehmann Construction Co., is granted to the extent indicated in Conclusion of Law "A" supra, and is in all other respects denied.

DATED: Albany, New York
June 7, 1977

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER