

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HISTORIC MT. DEFIANCE, INC.

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~~ ~~or~~ Period ~~(x)~~ :
June 1, 1970 through May 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 March, 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Historic Mt. Defiance,
Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Historic Mt. Defiance, Inc.
Ticonderoga, New York 12883

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)~~ petitioner.

Sworn to before me this

7th day of March, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HISTORIC MT. DEFIANCE, INC.

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)~~ or Period(s) :
June 1, 1970 through May 31, 1973.

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 7th day of March, 1977, ~~she~~ served the within
Notice of Determination by ~~(registered)~~ mail upon Dominick J. Viscardi

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Dominick J. Viscardi, Esq.

Viscardi & Carney

15 Father Joques Place

Ticonderoga, New York 12883

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 March, 1977

Bruce Batchelor

Janet Buck



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 7, 1977

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

**Historic Mt. Defiance, Inc.
Ticonderoga, New York 12883**

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 TAX COMMISSION

In the Matter of the Application :
of :
HISTORIC MT. DEFIANCE, 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, 1970 :
through May 31, 1973.

A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, Bldg. #9, State Campus, Albany, New York on April 6, 1976 at 10:30 A.M. Applicant appeared by Dominick J. Viscardi, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

Whether the charge per vehicle by the applicant, Historic Mt. Defiance, Inc., is subject to New York State sales and use tax.

1. On June 21, 1974, 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 the applicant, Historic Mt. Defiance, Inc.,

in the amount of \$1,906.20, plus penalty and interest of \$618.43 for a total of \$2,524.63.

2. Applicant, Historic Mt. Defiance, Inc., is a corporation that owns and developed a historical site. It paved a vehicular road, one mile in length, up a mountain to a summit where it was possible to view the area, picnic, purchase souvenirs and listen to tape recordings regarding the historical site. Automobiles, trucks and buses were charged three dollars without regard to the number of passengers carried. Motorcycles were charged one dollar whether or not it carried a passenger. There was no charge for the ten percent who walked upon the roadway to the summit, nor to those using trails to get to the summit. A steel gate, when closed at the end of the day, controls access to the roadway.

3. Applicant, Historic Mt. Defiance, Inc., is a profit-sharing organization with 140 stockholders. Net earnings inure to the benefit of said shareholders.

4. Applicant, Historic Mt. Defiance, Inc., filed returns on sales in the souvenir shop. It has been cooperative with the Sales Tax Bureau and on the advice of their accountant, failed to pay sales tax on admissions to the toll road.

CONCLUSIONS OF LAW

A. That the charge by the applicant, Historic Mt. Defiance, Inc., to vehicles is an admission charge as defined in section 1101(d)(2) of the Tax Law. Therefore, the admission charge was subject to New York State sales tax according to the meaning and intent of section 1105(f)(1) of the Tax Law.

B. That the application of Historic Mt. Defiance, Inc., is granted to the extent that the penalty and interest above minimum is waived; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 21, 1974; and, that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER