

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOOSIC VALLEY ASPHALT CO. 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)~~ Period(s)
March 1, 1967 to February 28, 1970.

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 Hoosic Valley Asphalt Co.,
Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Hoosic Valley Asphalt Co. Inc.
Main Street
Valley Falls, New York 12185
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)~~
~~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

7th day of June, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOOSIC VALLEY ASPHALT CO. 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 ~~XXXXXX~~ Period(s) :
March 1, 1967 to February 28, 1970.

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 June , 1977 , she served the within
Notice of Determination by ~~(certified)~~ mail upon Marvin I. Honig, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Marvin I. Honig, Esq.
as follows: Reilly & Honig & Smith, Esqs.
54 Second Street
Troy, New York 12180

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 Mac



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 7, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Hoosie Valley Asphalt Co. Inc.
Main Street
Valley Falls, New York 12185

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,

Frank J. Pucola

FRANK J. PUCOLA

Supervisor of

Small Claims Hearings

Enc.

cc: Petitioner's Representative:
Marvin I. Honig, Esq.
Rally & Honig & Smith, Esqs.
54 Second Street
Troy, New York 12180
Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
HOOSIC VALLEY ASPHALT CO. 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 March 1, 1967 :
to February 28, 1970.

Applicant, Hoosic Valley Asphalt Co. Inc., Main Street, Valley Falls, New York 12185, has 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 March 1, 1967 to February 28, 1970. (Notice No. 90743675).

A small claims hearing was held on July 30, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York, before Harry Huebsch, Hearing Officer. The applicant appeared by John C. Hill, Vice-President of Hoosic Valley Asphalt Co. Inc., and his representative, Marvin I. Honig, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq., of counsel).

ISSUE

Is the sale of bituminous material to exempt organizations subject to sales and use tax when the material is used to improve existing roads.

FINDINGS OF FACT

1. Applicant, Hoosic Valley Asphalt Co. Inc., was engaged in the sale of a bituminous material called asphalt which is used in the construction, repair and maintenance of highways. This material was sold and delivered to New York State and its political subdivisions in bulk, in barrels and by tank truck application at job sites. The Sales Tax Bureau held that the tank truck

operation involved materials used in a capital improvement and, therefore, subject to sales and use tax. A Notice of Determination dated November 12, 1970 was issued in the amount of \$3,768.62 additional tax plus \$957.82 penalty and interest for a total amount due of \$4,726.44.

2. Applicant, Hoosic Valley Asphalt Co. Inc., submitted bids to New York State on the price per gallon of bituminous material. The price included heating, hauling and application at any designated job site. There was no variance in the price for political subdivisions of New York which came under the same contract. A standard contract was used and would remain in effect for the work season.

3. Applicant, Hoosic Valley Asphalt Co. Inc., was informed of a job site location, time of delivery and approximate amount of bituminous material needed. Specialized delivery trucks were required which New York State itself does not possess. The trucks contained a heated insulated tank which held the material at a specific temperature. The material was pumped from the tank to a pipe containing orifices, permitting the material to be spread at a certain rate and in a certain width. A calibration device on the truck indicated how much material was applied and billing to New York State was made accordingly.

4. On arrival at the job site, a New York employee tested the material, and took over all operations. The driver was told where to apply the material. Any remaining material was returned to the plant. The driver performed no other duties.

5. The work involved the repair and maintenance of existing roads. The roads continued in controlled use during the repairs or maintenance. There was no new road construction. Applicant, Hoosic Valley Asphalt Co. Inc., did not supply any other materials or labor used in the operation. Applicant, Hoosic Valley Asphalt Co. Inc., made no decisions or recommendations as to the application of the bituminous material.

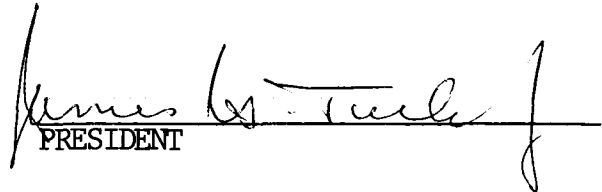
CONCLUSIONS OF LAW

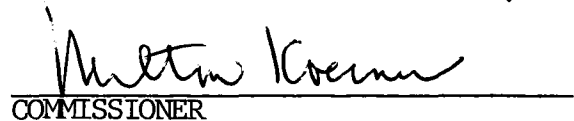
A. That applicant, Hoosic Valley Asphalt Co. Inc., was engaged in the sale of bituminous material to exempt organizations. This material was used in the repair and maintenance of existing roads and not for capital improvements and is, therefore, exempt from sales and use tax under section 1116(a)(1) of the Sales and Use Tax Law.

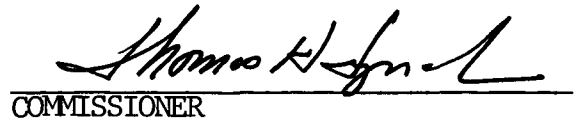
B. That the application of Hoosic Valley Asphalt Co. Inc. is granted and the Notice of Determination issued November 12, 1970 is cancelled.

DATED: Albany, New York
June 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER