

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MELVIN HABER d/b/a
MODERN HOME SERVICE 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 ~~year(s)~~ Period(s) :
June 1, 1971 through May 31, 1974

State of New York
County of Albany


John Huhn , 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 29th day of September , 19 77, she served the within
Notice of Determination by (~~certified~~) mail upon Harry Rosman, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harry Rosman, CPA
500 Old Country Rd.
Garden City, NY 11530

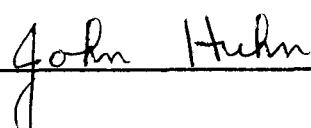
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of September , 19 77





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MELVIN HABER d/b/a

MODERN HOME SERVICE CO.

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)~~ Period(x) :
June 1, 1971 through May 31, 1974

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, 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 29th day of September, 1977, she served the within

Notice of Determination by ~~(certified)~~ mail upon Melvin Haber d/b/a
Modern Home Service Co.

~~(representative of)~~ the petitioner in the within proceeding,

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

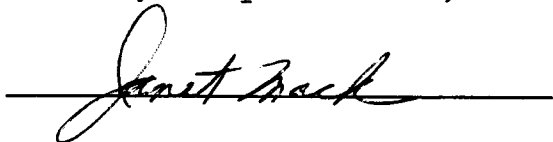
as follows: Melvin Haber d/b/a
Modern Home Service Co.
215 190th Avenue
Elmont, NY 11003

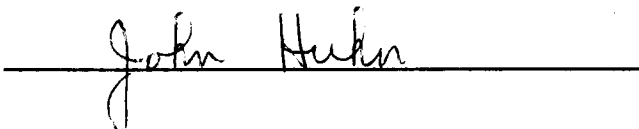
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~~(certified)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

29th day of September, 1977.







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

September 29, 1977

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

**Melvin Haber d/b/a
Modern Home Service Co.
215 190th Avenue
Elmont, NY 11003**

Dear Mr. Haber:

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 Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MELVIN HABER d/b/a	:	
MODERN HOME SERVICE CO.	:	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, 1971 through May	:	
31, 1974.	:	

Applicant, Melvin Haber d/b/a Modern Home Service Co., 215 109th Avenue, Elmont, New York 11003, 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, 1971 through May 31, 1974 (File No. 15416).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1977 at 1:15 P.M. Applicant appeared by Harry Rosman, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether the Sales Tax Bureau properly determined the applicant's taxable sales.

FINDINGS OF FACT

1. On January 20, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Melvin Haber d/b/a Modern Home Service Co., for the period June 1, 1971 through May 31, 1974. Said Notice was issued in accordance with section 1138 of the Tax Law and was based upon the findings of an audit conducted by the Sales Tax Bureau.

2. On audit, the Sales Tax Bureau determined that, in the absence of records substantiating exempt sales, the applicant's gross sales as reported on his Federal income tax returns were taxable in their entirety. The additional taxable sales per audit were \$9,154.00, \$8,950.00 and \$5,358.00 for the annual periods ending May 31, 1972, May 31, 1973 and May 31, 1974, respectively.

3. Applicant operated a home improvement business which did both capital improvement and repair work. During the period at issue, the applicant suffered flood damage to his home. He was able to salvage only a portion of his business records. The records (consisting of billings and capital improvement certificates) salvaged by the applicant disclosed that he performed capital improvement work in the sums of \$9,550.00, \$11,540.28 and \$9,150.00 for the annual periods ending May 31, 1972, May 31, 1973 and May 31, 1974, respectively. He did not charge sales tax on any of these capital improvements.

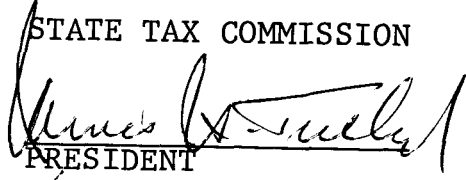
4. Applicant paid sales tax on the materials he purchased, which materials he subsequently incorporated into capital improvements to real property.

CONCLUSIONS OF LAW

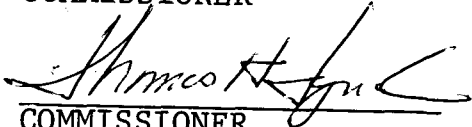
A. That the applicant performed capital improvement work to real property, the receipts from which are not subject to sales tax; that the applicant did not collect sales tax on the capital improvement transactions and, therefore, the additional taxable sales and additional tax due as determined by the Sales Tax Bureau are erroneous.

B. That the application of Melvin Haber d/b/a Modern Home Service Co. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is cancelled.

DATED: Albany, New York
September 29, 1977

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER