

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN J. FASANO

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) or~~ Period(s) April;
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 (~~certified~~) mail upon John J. Fasano

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

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

as follows: Mr. John J. Fasano
315 North Village Avenue
Rockville Centre, New York 11570

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 Mack



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

Mr. John J. Fasano
315 North Village Avenue
Rockville Centre, New York 11570

Dear Mr. Fasano:

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

Please take further notice that pursuant to
Section(s) **1139 & 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. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
JOHN J. FASANO : 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 April, 1973. :

Applicant, John J. Fasano, 315 North Village Avenue, Rockville Centre, New York 11570, 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 April, 1973. A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 12, 1976. Applicant, John J. Fasano, appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Whether applicant, John J. Fasano, is entitled to a refund of sales tax claimed to have been paid on a capital improvement contract.

FINDINGS OF FACT

1. On April 20, 1974, applicant, John J. Fasano, submitted an application for credit or refund of state and local sales or use tax claiming that he had paid \$420.00 of sales tax on a capital improvement contract with respect to the installation of a new roof and aluminum siding on his home.

2. The Sales Tax Bureau denied the aforesaid application on the basis that sales tax was not charged nor collected on the capital improvement contract.

3. The invoice that applicant, John J. Fasano, received from the contractor listed the total price of \$6,420.00 less \$420.00, resulting in a balance of \$6,000.00. The applicant paid the total price of \$6,420.00 as evidenced by cancelled checks made payable to the contractor.

4. The aforesaid invoice included a phrase which states "tax included."

5. The contractor has paid \$420.00 to the Sales Tax Bureau which represents the sales tax collected on the capital improvement contract in issue.

CONCLUSIONS OF LAW

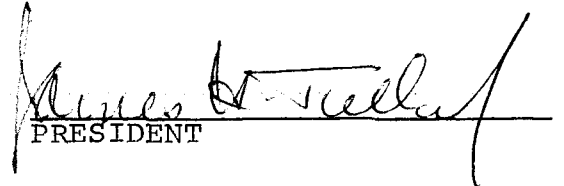
A. The facts clearly establish that the sales tax was collected and remitted to the Sales Tax Bureau on the purchase by applicant of the capital improvement contract.

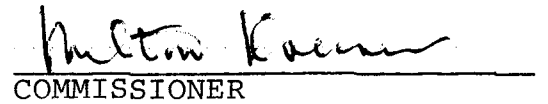
B. That, applicant, John J. Fasano, erroneously paid sales tax on a capital improvement contract and is therefore entitled to a refund.


C. That, the application of John J. Fasano is sustained
and a refund of \$420.00 is granted.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER