

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

WILLIAM J. BLOOMER

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)  
January 1, 1970 through May 31, 1975.

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 William J. Bloomer

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. William J. Bloomer  
Box 5  
Mahopac, New York 10541

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, 1977

Janet Mack

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM J. BLOOMER

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)  
January 1, 1970 through May 31, 1975.

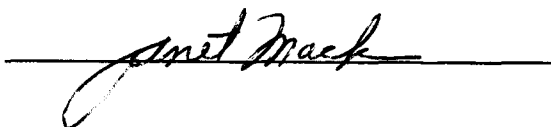
State of New York  
County of Albany

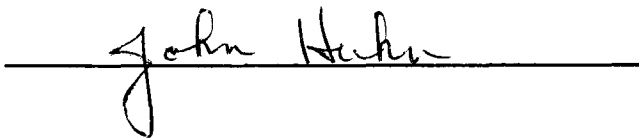
John Huhn, being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 29th day of September, 1977, ~~she~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Wolf Magalnick,  
C.P.A. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Wolf Magalnick, C.P.A.  
Old Stone Building  
P. O. Box C  
Mahopac, New York 10541  
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, 1977.







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

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

**September 29, 1977**

**Mr. William J. Bloomer**  
**Box 5**  
**Mahopac, New York 10541**

**Dear Mr. Bloomer:**

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 :

WILLIAM J. BLOOMER 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  
January 1, 1970 through May 31, 1975. :

---

Applicant, William J. Bloomer, Box 5, Mahopac, New York 10541, 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 January 1, 1970 through May 31, 1975 (File No. 11219).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 23, 1977 at 1:15 P.M. Applicant appeared by Wolf Magalnick, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Lawrence Stevens, Esq., of counsel).

#### ISSUE

Whether the audit of applicant's books and records for the period January 1, 1970 through May 31, 1975 properly reflected applicant's sales and use tax liability.

FINDINGS OF FACT

1. During the period January 1, 1970 through May 31, 1975, applicant was a painting contractor who performed the majority of his work for building contractors. He operated under the conception that the contracts he performed were capital improvements to real property. Therefore, he did not collect sales tax or file New York State sales and use tax returns. He paid sales tax on all purchases of materials and supplies.

2. The Sales Tax Bureau performed an audit of applicant's books and records for the period January 1, 1970 through May 31, 1975. As a result of said audit, it issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant on November 6, 1975 in the amount of \$1,517.06, plus penalty and interest.

3. Applicant computed gross sales on the basis of total bank deposits. Since at the time of the audit applicant could not prove that the receipts from a \$1,225.00 contract were included in total bank deposits, the Sales Tax Bureau concluded that applicant failed to record all his sales. Therefore, it increased his sales per books (total bank deposits) by 25 percent. The Bureau also analyzed applicant's sales invoices for the first half of 1975 and concluded that 74.2364 percent of applicant's sales were capital improvements and that the remaining sales were taxable transactions.

4. Applicant presented a bank statement as evidence that the receipts from the aforesaid contract for \$1,225.00 were, in fact, deposited and that his sales per books (total bank deposits) were not understated. He presented no documentary evidence to disprove the result of the Sales Tax Bureau's analysis of taxable and exempt sales.

CONCLUSIONS OF LAW

A. That the applicant presented substantial documentary evidence to show that the gross sales as reported on his books and records were correct and that the Sales Tax Bureau's 25 percent increase of gross sales was not warranted.

B. That the Sales Tax Bureau's analysis of taxable sales was supported by substantial documentation and, therefore, the resultant findings with respect to this analysis are correct.

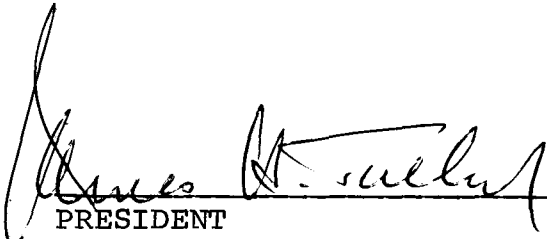
C. That the application of William J. Bloomer is granted to the extent of reducing the gross sales to conform with the gross sales as reported on the applicant's books and records; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes

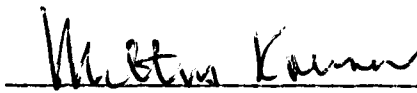
Due, issued November 6, 1975; and that, except as so granted,  
the application is in all other respects denied.

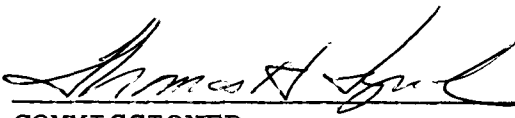
DATED: Albany, New York

STATE TAX COMMISSION

September 29, 1977

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER