

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS A. CAHILL

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) :  
3/1/71 through 11/30/73

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 27 day of April , 1977 , He served the within  
Notice of  
Determination by (~~certified~~) mail upon Thomas A. Cahill

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Thomas A. Cahill  
59 Westminster Drive  
Yonkers, New York 10710

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~~  
~~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

27 day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS A. CAHILL

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 ~~XXXXXX~~ or Period(s) :  
3/1/71 through 11/30/73

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 27 day of April, 1977, ~~She~~ served the within

Notice of Determination by (~~certified~~) mail upon James J. Veneruso, Esq.

(representative of) the petitioner in the within proceeding,

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

as follows: James J. Veneruso, Esq.

c/o Griffin, Kane, Letsen & Coogan, P.C.

30 South Broadway

Yonkers, New York 10701

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

27 day of April, 1977

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

April 27, 1977

ADDRESS YOUR REPLY TO

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

Mr. Thomas A. Cahill  
59 Westminister Drive  
Yonkers, New York 10710

Dear Sir:

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. PUCCIA**

**Supervisor of**

**Small Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
THOMAS A. CAHILL	:	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, 1971 through	:	
November 30, 1973.	:	

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Petitioner, Thomas A. Cahill, 59 Westminster Drive, Yonkers, New York 10710, has filed an application for revision of determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1971 through November 30, 1973. On December 22, 1976, applicant advised the State Tax Commission in writing his desire to waive a small claims hearing and to submit the case to the State Tax Commission upon the evidence contained in the file.

ISSUE

Did the petitioner, Thomas A. Cahill, charge sales tax on capital improvement work; and, if so, did he remit this tax to the Sales Tax Bureau?

FINDINGS OF FACT

1. Applicant, Thomas A. Cahill, filed New York State and local sales and use tax returns for the period March 1, 1971 through November 30, 1973.

2. On June 11, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Thomas A. Cahill. This notice was the result of a field audit under which the Sales Tax Bureau asserted that the applicant erroneously charged tax on capital improvement work and failed to pay these erroneous collections to New York State.

3. On September 25, 1974, applicant, Thomas A. Cahill, was represented by his accountant, Mr. Morton Coren, at a conference with representatives from the Sales Tax Bureau at the White Plains District Office. At this conference, evidence was submitted resulting in the reduction of sales tax due from \$4,728.05 to \$1,298.23.

4. On November 20, 1974, applicant, Thomas A. Cahill, signed a Consent to Fixing of Tax Not Previously Determined and Assessed which indicated a tax due of \$1,298.23.

5. Applicant, Thomas A. Cahill, was a building contractor operating in the Yonkers, New York area. He performed capital improvement work, and on some business for this capital improvement work, he separately stated the sales tax.

6. The Sales Tax Bureau held that the billings for capital improvement work on which the sales tax was separately stated, were erroneous, and the sales tax so separately stated to be due. In the absence of a complete set of records being submitted by the applicant, the Sales Tax Bureau projected the tax due on the basis of the records available.

7. Applicant, Thomas A. Cahill, did not make available for examination, a complete set of books and records.

CONCLUSIONS OF LAW

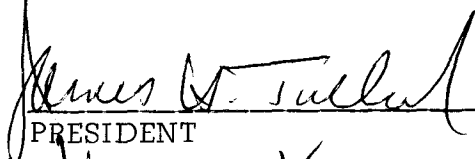
A. That the petitioner, Thomas A. Cahill, charged sales tax on certain capital improvement work and failed to pay over such tax to the Sales Tax Bureau.

B. That the petitioner, Thomas A. Cahill, failed to present documentary or other substantial evidence as required by section 1135 of the Tax Law and, therefore, has failed to sustain his burden of proof.

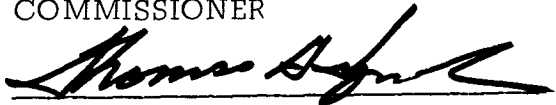
C. That the application of Thomas A. Cahill is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes issued June 11, 1974 and revised per conference which resulted in a tax due of \$1,298.23, is sustained.

DATED: Albany, New York  
April 27, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER