

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

PLATTSBURGH READY-MIX CORP.

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)~~  
June 1, 1970 through May 31, 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 21st day of December, 1976, ~~she~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Plattsburgh Ready-Mix  
Corp. ~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Plattsburgh Ready-Mix Corp.  
Beekmantown Road  
Plattsburgh, New York

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 the)~~ petitioner.

Sworn to before me this

21st day of December, 1976

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

ADDRESS YOUR REPLY TO

December 21, 1976

TELEPHONE: (518) **457-3850**

Plattsburgh Ready-Mix Corp.  
Beekmantown Road  
Plattsburgh, New York

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. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

## STATE TAX COMMISSION

In the Matter of the Application :  
of :  
PLATTSBURGH READY-MIX CORP. : 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, 1970 through May 31, :  
1973. :

Applicant, Plattsburgh Ready-Mix Corp., Beekmantown Road, Plattsburgh, New York, 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, 1970 through May 31, 1973. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on July 27, 1976 at 9:15 A.M. Applicant was represented by Gilles Boyer, Corporate Treasurer. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq. of counsel).

Did the charges by the applicant for the use of its trucks to a subsidiary corporation constitute a rental subject to the sales tax?

FINDINGS OF FACT

1. Applicant, Plattsburgh Ready-Mix Corp., has filed New York State and local sales and use tax returns for the period June 1, 1970 through May 31, 1973.

2. As the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use taxes due against applicant, Plattsburgh Ready-Mix Corp., for the period June 1, 1970 through May 31, 1973 in the sum of \$3,644.36. The Sales Tax Bureau asserted that charges made by Plattsburgh Ready-Mix Corp. to Plattsburgh Quarries, Inc. for the use of trucks constituted taxable rental charges.

3. Applicant, Plattsburgh Ready-Mix Corp., made available its trucks to Plattsburgh Quarries, Inc. When Plattsburgh Quarries, Inc. made use of a truck, Plattsburgh Ready-Mix Corp. charged them for this use. In those cases, where truck and driver were used by Plattsburgh Quarries, Inc., the transactions were held to be transportation charges. In other cases, Plattsburgh Ready-Mix Corp. gave use of the trucks to Plattsburgh Quarries, Inc. with a Quarries' driver taking control of the truck. The charges for these transactions were held to be taxable rentals.

4. The applicant, Plattsburgh Ready-Mix Corp., contends that the dominion and control measure used by the Sales Tax Bureau, in determining whether the charges from Plattsburgh Ready-Mix Corp.

to Plattsburgh Quarries, Inc. for a vehicle is a transportation charge or a vehicle rental, is not valid under these circumstances because both corporations have the same ownership, and it is the owners that maintain dominion and control of the vehicles.

CONCLUSIONS OF LAW

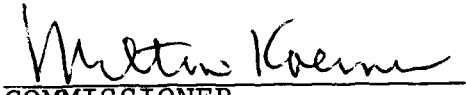
A. That the charges by Plattsburgh Ready-Mix Corp. to Plattsburgh Quarries, Inc. for the use of Ready-Mix Corp. trucks constitute a rental of tangible personal property subject to the imposition of sales tax in accordance with section 1105(a) of the Tax Law.

B. That the application of Plattsburgh Ready-Mix Corp. is denied and the Notice of Determination and Demand for payment of sales and use taxes due issued May 22, 1974 is sustained.

DATED: Albany, New York  
December 21, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER