

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ENGELHAUPT CO., INC., FRANCIS J. SCHNEIDER and AFFIDAVIT OF MAILING  
ROBERT M. DAILEY, Individually and as Officers  
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) :  
August 1, 1965 to August 31, 1969.

State of New York  
County of Albany

Marsina Donnini , 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 July , 1977, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Engelhaupt Co., Inc.  
Robert M. Dailey ~~(representative of)~~ Francis J. Schneider &  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Engelhaupt Co., Inc.  
Francis J. Schneider & Robert M. Dailey  
Individually & as Officers  
925 Bailey Avenue  
Buffalo, New York 14206  
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)~~  
~~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 July , 1977.

Marsina Donnini

Not Mark

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ENGELHAUPT CO., INC., FRANCIS J. SCHNEIDER and AFFIDAVIT OF MAILING  
ROBERT M. DAILEY, Individually and as Officers  
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~~ Period(s) :  
August 1, 1965 to August 31, 1969.

State of New York  
County of Albany

Marsina Donnini , 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 July , 1977, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Joseph C. Tisdall  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Joseph C. Tisdall, Esq.  
2010 Rand Building  
Buffalo, New York 14203  
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 July , 1977.

Janet Mach

Marsina Donnini



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

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

July 29, 1977

**Engelhaupt Co., Inc.**  
**Francis J. Schneider & Robert M. Dailey**  
**Individually & as Officers**  
**925 Bailey Avenue**  
**Buffalo, New York 14206**


**Gentlemen:**

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,

  
**Paul B. Coburn**  
**Supervising Tax**  
**Hearing Officer**

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	:	
ENGELHAUPT CO., INC., FRANCIS J. SCHNEIDER	:	DETERMINATION
and ROBERT M. DAILEY, Individually and as Officers	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Periods August 1, 1965 to August 31, 1969.	:	

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Applicants, Engelhaupt Co., Inc., Francis J. Schneider, and Robert M. Dailey, individually and as officers, 925 Bailey Avenue, Buffalo, New York 14206, 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 periods August 1, 1965 to August 31, 1969. (File No. 00443).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on June 11, 1976 at 9:00 A.M. Applicants appeared by Joseph C. Tisdall, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

Whether applicant is liable for sales tax on materials used on various building projects.

FINDINGS OF FACT

1. On November 10, 1970, pursuant to a field audit of records, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Engelhaupt Co., Inc., Francis J. Schneider and Robert M. Dailey, individually and as officers, in the amount of \$29,462.86, plus penalty and interest of \$13,781.90, for a total sum of \$43,244.76. Following a post-audit review on October 17, 1972, the tax deficiency was adjusted and reduced in the amount of \$4,475.37 to \$24,987.49.

2. Applicant, Engelhaupt Co., Inc., was a sheet metal contractor installing heating, ventilating and air-conditioning units. They bid on various projects during the period in issue, usually as a subcontractor to another subcontractor, Quackenbush Co., Inc. of Buffalo.

3. In 1965, a general contractor, Foster-Lipkin, contracted with the Dormitory Authority of the State of New York at a base bid of \$8,433,000.00, for materials and labor for the College of Fine Applied Arts, College of Graphic Arts and Photography, at the Rochester Institute of Technology, Rochester, New York. The base bid as per contract included and stated \$4,216,500.00 for materials and \$4,216,500.00 for labor. This was project #111.

Applicant, Engelhaupt Co., Inc., through subcontractor Quackenbush Co., Inc., was awarded work on this project. The contract order for \$585,000.00 specified in part that material purchased by contractors was for resale to the Authority, and as such was exempt from New York State sales and use taxes, and that the Dormitory Authority was exempt from payment of sales and use taxes. Freight in the price was to be invoiced separately. The invoices submitted by applicant, Engelhaupt Co., Inc., separated material and labor costs.

4. Applicant, Engelhaupt Co., Inc., was a subcontractor on project #150 in 1965 for work on Rochester Institute of Technology dormitories. This was under the Dormitory Authority, Phase I in Henrietta, New York for the general contractor, Walter A. Stanley Construction Co., Inc., Ossining, New York, who submitted to subcontractors a blanket resale certificate to be used in securing exemption from New York State sales and use tax on the project. The purchase order to applicant separately stated material and labor costs.

5. Applicant, Engelhaupt Co., Inc., was a subcontractor on project #175 for work on the Roswell Interdisciplinary Center, an exempt organization. All bids did not therefore, include New York State, Federal or local taxes as per instructions. All

material and supplies were ordered and purchased by contractors in the owner's name. The invoices separately listed material and labor costs.

6. During the period in issue, applicant, Engelhaupt Co., Inc., had bid and won many contracts as a subcontractor with exempt organizations. Invoices reflected separation of labor and material costs. Job #325 was for Alfred University. The costs as per contract indicated that labor was \$122,673.00 and cost for material was \$230,886.00. Job #444 was for the State University Fund, a library building. The costs as per contract indicated that labor was \$1,904,100.00 and material was \$1,653,100.00. Job #500 was for the State University Fund, Geneseo Demonstration School. The costs as per contract indicated that labor was \$1,706,600.00 and material was \$1,572,500.00. Job #935 was for the Nazareth Nursing Home, an exempt institution. Applicant's billing as per contract was \$10,050.00 for labor and \$10,967.00 for materials. Job #999 was for the Rochester Institute of Technology, for the Applied Science Building. The costs as per contract indicated that labor was \$46,100.00 and material was \$93,500.00.

7. On March 23, 1965, applicant, Engelhaupt Co., Inc., bid on job #900 for the State University College at Buffalo, New York as subcontractor to Joseph Davis, Inc., a contractor from Buffalo, New York. The lump-sum bid for the job was \$208,780.00.

8. During the period in issue, applicant, Engelhaupt Co., Inc., performed work and purchased materials as a subcontractor on job #'s 220, 285, 441 and 476, for Westinghouse Electric Corp., who issued resale certificates. Westinghouse Electric Corp. had a Blanket Direct Payment Certificate from the Sales Tax Bureau.

9. During the period in issue, applicant, Engelhaupt Co., Inc., subcontracted on job #885 for R. J. Moran & Sons, Inc., Buffalo, New York. This work was for Batavia Downs. A Direct Payment Permit #DP 000393 was furnished by the Genesee Motor Racing Assn., Inc. Job #375 was also for Batavia Downs.

10. Applicant, Engelhaupt Co., Inc., did not contest the taxability of the following job numbers and names:

- #777 Erie County Court
- #185 National Aniline
- #410 Westinghouse
- #520 Allegheny Ludlum
- #125 Westinghouse
- #330 Harvest the Best
- #499 Mar Mar Restaurant
- #550J DeGraff Memorial Hospital

11. Applicant, Engelhaupt Co., Inc., cooperated with the Sales Tax Bureau and acted in good faith.

#### CONCLUSIONS OF LAW

A. That applicant, Engelhaupt Co., Inc., as subcontractor on the following projects, purchased materials pursuant to general contracts made with exempt organizations, which required a resale



to these organizations of the materials as they were the ultimate consumer of the materials. Therefore, any purchase or sale of said materials was not subject to sales and compensating use taxes according to the meaning and intent of section 1116 of the Tax Law. These project numbers are as follows:

a) #111	d) #444	g) #999
b) #150	e) #500	h) #885
c) #175	f) #935	i) #375

B. That applicant, Engelhaupt Co., Inc., a subcontractor on job #900 dated March 23, 1965, was not liable for sales tax on the purchase of materials inasmuch that their performance was on a pre-April 14, 1965 lump-sum subcontract with a prime contractor in accordance with the meaning and intent of former section 1119(3) of the Tax Law.

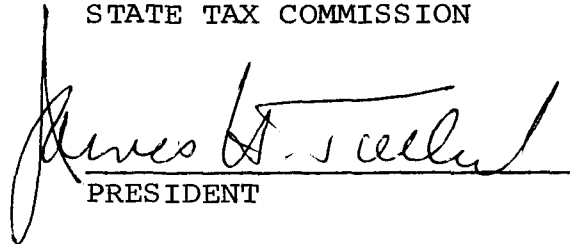
C. That applicant, Engelhaupt Co., Inc., was not liable for sales tax on materials on job #'s 220, 285, 441 and 476. These jobs were for the Westinghouse Electric Corp., who issued resale certificates and who had a Blanket Direct Payment Certificate from the Sales Tax Bureau.

D. That the application of Engelhaupt Co., Inc., Francis J. Schneider, and Robert M. Dailey, individually and as officers, is granted to the extent that interest in excess of the minimum interest and the penalty imposed pursuant to section 1145 of the

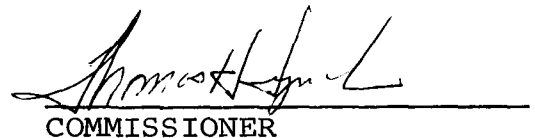
Tax Law for the years in issue is cancelled; that the sales tax for these years be recomputed as per Conclusions of Law "A", "B" and "C", together with such interest as is legally due; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 10, 1970; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York  
July 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER