

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
DAVID DRUCKER and STELLA DRUCKER : AFFIDAVIT OF MAILING
d/b/a DAVID DRUCKER LUMBER CO.
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 ~~XXXXXX~~ Period(s) :
September 1, 1967 through August 31, 1970.

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 4th day of March , 1977, he served the within
Notice of Determination by (~~registered~~) mail upon David & Stella Drucker
d/b/a David Drucker Lumber Co. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: David Drucker and Stella Drucker
d/b/a David Drucker Lumber Co.
60 East 42nd Street
New York, New York 10017
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~~
~~XXXXXX~~) 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

4th day of March , 1977.

Bruce Batchelor

Janet Trach

STATE OF NEW YORK
STATE TAX COMMISSION

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DAVID DRUCKER and STELLA DRUCKER : AFFIDAVIT OF MAILING
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Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
September 1, 1967 through August 31, 1970.

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 4th day of March , 1977, ~~he~~ served the within
Notice of Determination by (~~certified~~) mail upon Joseph Mandel

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph Mandel, Esq.
551 Fifth Avenue
New York, New York 10017

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

4th day of March , 1977

Bruce Batchelor

Janet Mark



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 4, 1977

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

David Drucker and Stella Drucker
d/b/a David Drucker Lumber Co.
60 East 42nd Street
New York, New York 10017

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

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 :
DAVID DRUCKER and STELLA DRUCKER : DETERMINATION
d/b/a DAVID DRUCKER LUMBER CO. :
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 September 1, :
1967 through August 31, 1970. :
:

Applicants, David Drucker and Stella Drucker, d/b/a
David Drucker Lumber Co., 60 East 42nd Street, New York, New York
10017, 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 September 1, 1967 through August 31, 1970. 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 15, 1976.
Applicant appeared by Joseph Mandel, Esq. The Sales Tax Bureau
appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Are transportation charges for delivery of lumber from
applicant's suppliers directly to applicant's customers, which
were separately stated on sales invoices, subject to sales tax?

FINDINGS OF FACT

1. On August 2, 1971, the Sales Tax Bureau issued a Notice of Determination and Demand against applicants, David Drucker and Stella Drucker, d/b/a David Drucker Lumber Co., for sales tax due in the sum of \$335.46, plus penalty and interest of \$85.52. This determination resulted from the examination of applicant's books and records for the periods September 1, 1967 through August 31, 1970, and represents certain transportation charges deemed subject to sales tax by the Sales Tax Bureau.

2. Applicant is a wholesaler of lumber and forest products; the majority of its sales are made to general contractors. Applicant does not sell to the general public.

3. Applicant does not maintain a yard or other facilities for the storage of its lumber products. The lumber products applicant sells are delivered directly to its customers from the mills of its suppliers. The terms of applicant's sales are F.O.B. shipping point.

4. Applicant's selling price per board foot measure includes the cost of transporting the lumber from its suppliers' mills to its customers. The sales price per board foot measure varies, depending upon the geographical area in which the shipment will be made. Applicant and its suppliers have agreed on the delivery cost per board foot measure, for each of the predetermined shipping areas, which will be billed to applicant for rebilling to his customers.

5. Applicant bills its customers on the agreed price per board foot measure. When invoicing its customers, the predetermined transportation cost is subtracted from the total sales price (before sales tax is added) and separately stated on the invoice. Applicant then computes the sales tax due on the basis of the total sales price minus the transportation charges. The sales tax is also separately stated on the invoice.

CONCLUSIONS OF LAW

A. That section 1101(b)(3) of the Tax Law excludes from the definition of receipt, "the cost of transportation of tangible personal property sold at retail where such cost is separately stated in the written" contract, if any, and on the bill rendered to the purchaser.

B. That applicants, David Drucker and Stella Drucker, d/b/a David Drucker Lumber Co., separately stated the transportation charges on the bills rendered to its customers.


C. That the tangible personal property transported was sold at retail within the meaning and intent of section 1101(b)(4)(i) of the Tax Law.

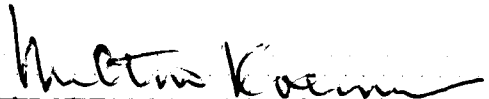
D. That applicants, David Drucker and Stella Drucker, d/b/a David Drucker Lumber Co., properly excluded transportation charges from receipts subject to sales tax.


E. That the application of David Drucker and Stella Drucker, d/b/a David Drucker Lumber Co., is sustained.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER