

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
CITY WIRE WORKS, INC., HENRY KUPERWICK  
PAUL KOVAK, JOHN KUPERWICK, AND LOUIS  
MILUCKY, 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(~~X~~) :  
March 1, 1970 to February 28, 1973.

AFFIDAVIT OF MAILING

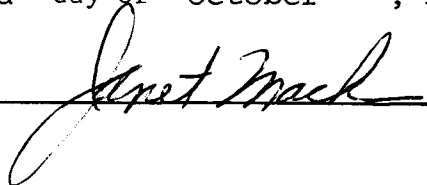
State of New York  
County of Albany

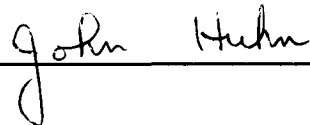
John Huhn , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 3rd day of October , 1977, ~~he~~ served the within  
City Wire Works, Inc.  
Notice of Determination by ~~(XXXXXX)~~ mail upon Henry Kuperwick  
Paul Kovak  
John Kuperwick  
Louis Milucky (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
City Wire Works, Inc.  
as follows: Henry Kuperwick, Paul Kovak, John Kuperwick &  
Louis Milucky, Individually & as Officers  
158 - 16th Street  
Brooklyn, New York 11215  
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

3rd day of October , 1977.

  
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\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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of  
CITY WIRE WORKS, INC., HENRY KUPERWICK  
PAUL KOVAK, JOHN KUPERWICK, AND LOUIS  
MILUCKY, 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 (x)  
March 1, 1970 to February 28, 1973.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

John Huhn, 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 3rd day of October, 1977, he served the within  
Notice of Determination by ~~(XXXXXX)~~ mail upon M. Marc Spar  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: M. Marc Spar, Esq.  
16 Court Street  
Brooklyn, New York 11241

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

3rd day of October, 1977.

Janet Mack

John Huhn

In the Matter of the Petition

CITY WIRE WORKS, <sup>of</sup> INC., HENRY KUPERWICK  
PAUL KOVAK, JOHN KUPERWICK, AND LOUIS  
MILUCKY, 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 ~~(X)~~ :  
March 1, 1970 to February 28, 1973.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

John Huhn , 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 3rd day of October , 1977, ~~he~~ served the within  
Notice of Determination by ~~certified~~ mail upon Roy I. Martin  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Roy I. Martin, Esq.  
295 Northern Boulevard  
Great Neck, New York 11021

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

3rd day of October , 1977.

Janet Mack

John Huhn



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

October 3, 1977

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

**City Wire Works, Inc.  
Henry Kuperwick, Paul Kovak, John Kuperwick &  
Louis Milucky, Individually & as Officers  
158 - 16th Street  
Brooklyn, New York 11215**

**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,

**John J. Sollecito  
Director  
Tax Appeals Bureau**

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 :  
CITY WIRE WORKS, INC., HENRY KUPERWICK : DETERMINATION  
PAUL KOVAK, JOHN KUPERWICK, AND LOUIS :  
MILUCKY, 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 :  
Period March 1, 1970 to February 28, 1973 :  
:

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Applicants, City Wire Works, Inc., Henry Kuperwick, Paul Kovak, John Kuperwick, and Louis Milucky, individually and as officers, 158 - 16th Street, Brooklyn New York 11215, 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 March 1, 1970 to February 28, 1973. (File No. 11156).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 25, 1977 at 9:15 A.M. Applicants appeared by M. Marc Spar, Esq. and Roy I. Martin, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether applicant, City Wire Works, Inc., was liable for sales tax on material used on building projects performed on school buildings for the Board of Education of the City of New York.

FINDINGS OF FACT

1. On November 2, 1973, 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 applicants, City Wire Works, Inc., Henry Kuperwick, Paul Kovak, John Kuperwick and Louis Milucky, individually and as officers, in the amount of \$18,727.89, plus penalty and interest of \$5,103.91, for a total sum of \$23,831.80.

2. During the period in issue, applicant, City Wire Works, Inc., was a contractor that installed wire mesh guards over school windows to prevent their destruction. Bids for these jobs were made in a detailed manner, i.e. separately for material, for labor and for time. Bids did not include any sales tax for materials. The contracts issued by the Board of Education of the City of New York only stated the full bid price. All contracts were a standard form. An insert was stapled within the bound contract advising applicant that the Comptroller approved the contract and that it was, therefore, valid. In the contract, Article 45, under payments, had space for insertion of the bid price. Clause #10 therein exempted payment of Federal excise taxes and Article 60 stated that if "it was the intent and understanding of the parties that each and every provision of law required to be inserted should be and is inserted".

3. The work performed by applicant, City Wire Works, Inc., for the Board of Education of the City of New York, accounted for 98.5% of their endeavor. Applicant secured Contractor Exempt Purchase Certificates on tax exempt sales and paid sales tax on applicable transactions. Applicant never understated taxable sales upon tax returns for the period in issue.

4. Applicant, City Wire Works, Inc., never considered sales tax on materials in their bid estimates for the Board of Education of the City of New York, the true beneficiary of the pricing.

5. During the period in issue, applicant, City Wire Works, Inc., used galvanized Channel 11 wire, 7/8 by 3/8 frame, on contracts with the Board of Education of the City of New York. No other customer required this specification.

6. Applicant, City Wire Works, Inc., subpoenaed and presented to the State Tax Commission all available contracts made with the Board of Education of the City of New York during the period in issue.

7. The Board of Education of the City of New York is an exempt organization not subject to sales and compensating use taxes.

CONCLUSIONS OF LAW

A. That the purchase by applicant, City Wire Works, Inc., of materials used on projects bid for the Board of Education of the City of New York, an exempt organization, was not subject to sales and compensating use taxes in accordance with the meaning and intent of section 1116 of the Tax Law. Matter of Sweet Associates, Inc. v. Gallman, 36 AD 2nd 95.

B. That the application of City Wire Works, Inc., Henry Kuperwick, Paul Kovak, John Kuperwick, and Louis Milucky, individually and as officers is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 2, 1973 is cancelled.

DATED: Albany, New York  
October 3, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER