

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HAMBURG CAR WASH, LTD.
and
HARRY H. and JANET ABEL
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)
August 31, 1965 through August 31, 1971.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Catherine Steele, 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 9th day of August, 1976, she served the within Notice of Determination by ~~XXXXXX~~ mail upon Hamburg Car Wash, Ltd.

~~XXXXXX~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Hamburg Car Wash, Ltd.
c/o E. G. Bautz, P.A.
4105 Seneca Street
Buffalo, New York 14224
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 ~~XXXXXX~~ ~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

9th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HAMBURG CAR WASH, LTD. : AFFIDAVIT OF MAILING
and
HARRY H. and JANET ABEL :
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) :
August 31, 1965 through August 31, 1971.

State of New York
County of Albany

Catherine Steele, 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 9th day of August, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon Harry H. and Janet Abel ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Harry H. Abel
313 Lake Street
Hamburg, 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~~ ~~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
9th day of August, 1976.

Janet Mack

Catherine Steele

STATE OF NEW YORK
STATE TAX COMMISSION

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HAMBURG CAR WASH, LTD.
and
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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) :
August 31, 1965 through August 31, 1971.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Catherine Steele, 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 9th day of August, 1976, she served the within Notice of Determination by ~~XXXXXX~~ mail upon E. G. Bautz, P.A.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: E. G. Bautz, P.A.
4105 Seneca Street
Buffalo, New York 14224

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.

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Tax Law for the ~~Year(s)~~ Period(s)
August 31, 1965 through August 31, 1971.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Catherine Steele, 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 9th day of August, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon John E. Palmer, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John E. Palmer, Esq.
Schutrum, Howder, Palmer & Martin, Esqs.
43 Court Street
Buffalo, New York 14202
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

9th day of August, 1976.

Janet Mack

Catherine Steele



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

August 9, 1976

TELEPHONE: (518) 457-3850

Hamburg Car Wash, Ltd.
c/o E. G. Bautz, P.A.
4105 Seneca Street
Buffalo, New York 14224

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,

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

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



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

August 9, 1976

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

Mr. & Mrs. Harry H. Abel
313 Lake Street
Hamburg, New York

Dear Mr. & Mrs. Abel:

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,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HAMBURG CAR WASH, LTD.	:	
and	:	DETERMINATION
HARRY H. and JANET ABEL	:	
for a Revision of a Determination or	:	
for a Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax	:	
Law for the Periods August 31, 1965	:	
through August 31, 1971.	:	

Applicants, Hamburg Car Wash, Ltd. c/o E. G. Bautz, P.A., 4105 Seneca Street, Buffalo, New York, 14224, and Harry H. and Janet Abel, 313 Lake Street, Hamburg, New York, applied for a revision of a determination or for a refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods August 31, 1965 through August 31, 1971.

Upon notice to all interested parties, a formal hearing was held at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on June 10, 1975, at 11:25 A.M., before L. Robert Leisner, Hearing Officer. The taxpayers appeared by Schutrum, Howder, Palmer & Martin, Esqs. (John E. Palmer, Esq. of counsel). Taxpayers were also represented by E. G. Bautz, P.A. The Sales Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq. of counsel).

ISSUE

Did the facility operated by the taxpayers dispense a taxable service within the meaning of section 1105(c)(3), Tax Law?

furnished by the applicants was exempted by section 1115 of the Tax Law. The applicants further contended that the patrons of their facility rented the land and buildings and that section 1101(b), Tax Law, excluded such rentals. The applicants also contended that upon dissolution of the corporation known as Hamburg Car Wash, Ltd. on October 20, 1971, a release stating that no taxes were due was issued.

CONCLUSIONS OF LAW

A. That the facility described herein did dispense a taxable service within the meaning of section 1105(c)(3). This provision imposed a sales tax on services involving the maintenance, service or repair of tangible personal property, "whether or not the services are performed directly or by means of coin operated equipment or by other means". Clearly the fact that patrons supplied their own labor does not prevent imposition of the tax. The provision of the spraying device and the necessary soap and water is a taxable service in and of itself.

B. That the assertion that no sales tax was collected from patrons does not change seller's liability. Seller is liable for all taxes not properly collected by virtue of section 1133(a), Tax Law.

C. That the transactions herein do not fall within the exemption of section 1115(a)(2) for the sale of water when delivered through mains or pipes. This exemption is primarily designed for public utilities. The sale of water in the instant case was in conjunction with the provision of a taxable service. This was not the mere sale of water but the sale of a commercial, taxable service.

D. That the use of the applicant's facility by customers did not occasion a rental of the premises which would be excluded by 1101(b), Tax Law.

E. That the dissolution of Hamburg Car Wash, Ltd. did not prevent imposition of sales tax liability for the period in question. The applicants failed to prove the existence of a release from tax liability for the period in question.

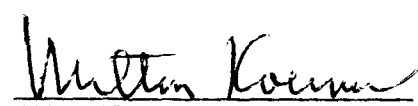
F. That applicants acted in good faith.

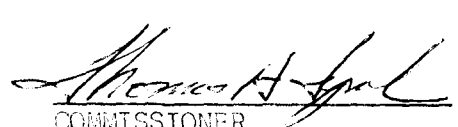
G. That the application is denied insofar as the imposition of sales tax and interest for the period in question is concerned. The application is granted as to the dismissal of any penalties imposed on the taxpayers.

DATED: Albany, New York
August 9, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER