

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~

Application :

of

MICHAEL J. HANNAN d/b/a :
NORTHERN LIGHTS BRIDGE COMPANY :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~CERTIFIED~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use :
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period :
December 1, 1969 through May 31, 1972

State of New York
County of Albany

MARY LOU SAMUELS , 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 31st day of March , 19 76, she served the within
Notice of ~~Decision (or~~ Determination) by ~~certified~~ mail upon Michael J. Hannan d/b/a
d/b/a Northern Lights Bridge Company ~~representative of~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Michael J. Hannan d/b/a
Northern Lights Bridge Company
Box 101
Ithaca, New York 14850
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~
~~of)~~ 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

31st day of March , 196 .

Mary Lou Samuels

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
March 31, 1976

Mr. Michael J. Hannan d/b/a
Northern Lights Bridge Company
Box 101
Ithaca, New York

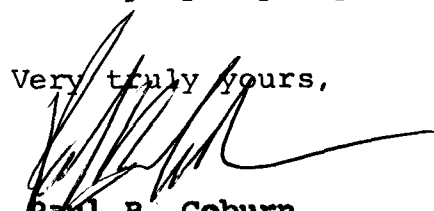
Dear Mr. Hannan:

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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: ~~Petitioner's Representative~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

MICHAEL J. HANNAN d/b/a
NORTHERN LIGHTS BRIDGE COMPANY :

DETERMINATION

for a Revision of a Determination or for :
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Period December 1, 1969 through :
May 31, 1972. :

Applicant, Michael J. Hannan d/b/a Northern Lights Bridge Company, Box 101, Ithaca, New York 14850, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1969 through May 31, 1972.

A formal hearing was held at the offices of the State Tax Commission, Binghamton, New York, on October 9, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer appeared personally and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (James A. Scott, Esq., of counsel).

ISSUE

Was the hiring of a crane and operator on a lump sum construction capital improvement on an hourly rate for a total bill of \$2,200.00 subject to sales tax?

FINDINGS OF FACT

1. The taxpayer, Michael Hannan d/b/a Northern Lights Bridge Co., timely filed New York State sales and use tax returns for the period December 1, 1969 through May 31, 1972.

2. A Notice of Determination of sales and use taxes for the period December 1, 1969 through May 31, 1972 was issued on July 7, 1973, against Michael J. Hannan d/b/a Northern Lights Bridge Co., under Notice No. 90,750,690.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax.

4. The Wallace Steel Company located in Ithaca, New York, hired the taxpayer to install pipe piling for their scrap handling facility involving an overhead crane.

5. The Wallace Steel Company bought the pipe and the plate for the end of the pipe to be driven into the ground.

6. The taxpayer bought the splicing sleeves and the concrete with which the pipes are filled after being driven. The taxpayer furnished the labor and the pertinent equipment.

7. The taxpayer hired a crane with an operator from the Hughes Crane Service which was billed at an hourly rate for the operator and crane for a total of \$2,200.00.

8. The work was for a lump sum contract based on an estimated quantity for pile installation and was on a capital improvement for a scrap handling facility.

9. The taxpayer, the Wallace Steel Company and Hughes Crane Service proceeded on the assumption that construction for a capital improvement and scrap facility would be tax free.

10. On all other items of tax in the contract there is no dispute, but they differ on the taxability of a crane and operator.

11. At the hearing the taxpayer likened the crane and operator to a carpenter with tools.

12. The Sales Tax Bureau asserted that the hiring of the crane and operator for one charge made the entire transaction a taxable rental.

CONCLUSIONS OF LAW

A. The hiring of the crane with the operator at an hourly rate was subject to sales and use tax. The use of the crane is much different from a carpenter with hand tools. In the case of the hiring of the crane there could be a breakdown or separate charges for labor and the equipment rental. However in this case there was no breakdown of separate charges and the entire charge is taxable.

B. This was commercial construction and not for a tax exempt institution and thus the taxpayer cannot claim any exempt status or exempt transaction.

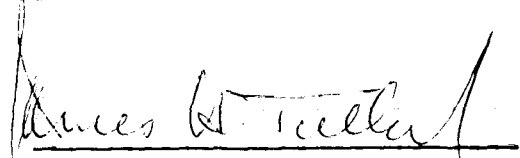
C. The taxpayer acted in good faith and the penalty is cancelled.

D. The taxpayer's petition is in all other respects denied and the determination of sales tax is sustained.

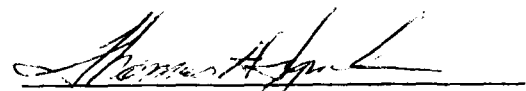
E. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
March 31, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER