

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

HOPE'S WINDOWS, ^{of} DIVISION OF ROBLIN
HOPE'S INDUSTRIES, INC.

AFFIDAVIT OF MAILING

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)
3/1/68 through 2/28/71

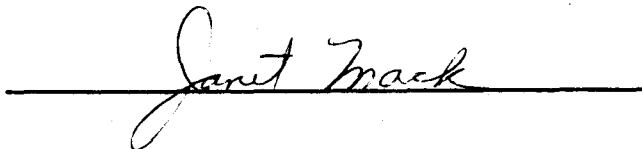
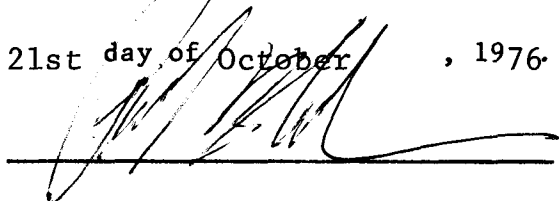
State of New York
County of Albany

Janet Mack, 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 21st day of October, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Hope's Windows, Division
of Roblin, Hope's Industries, Inc.
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Hope's Windows, Division of Roblin
Hope's Industries, Inc.
84 Hopkins Avenue
Jamestown, New York 14701
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

21st day of October, 1976.



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

HOPE'S WINDOWS, ^{of} DIVISION OF ROBLIN :
HOPE'S INDUSTRIES, INC. :

AFFIDAVIT OF MAILING

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) :
3/1/68 through 2/28/71

State of New York
County of Albany

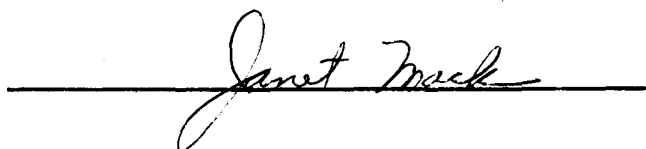
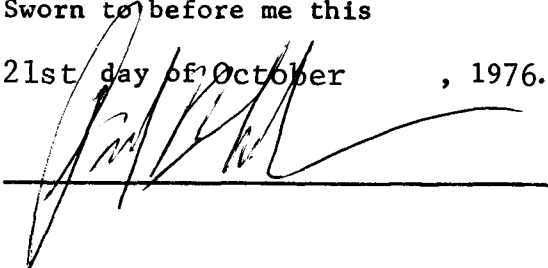
Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 21st day of October , 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Ronald H. Jensen, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ronald H. Jensen, Esq.
Jaeckle, Fleischmann & Mugel
700 Liberty Bank Building
Buffalo, NY 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

21st day of October , 1976.





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

October 21, 1976

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

Hope's Windows, Division of Roblin
Hope's Industries, Inc.
84 Hopkins Avenue
Jamestown, New York 14701

Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 and 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 :

HOPE'S WINDOWS, DIVISION OF ROBLIN : DETERMINATION
HOPE'S INDUSTRIES, INC. :

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, 1968 through February 28, :
1971. :

Applicant, Hope's Windows, with offices at 84 Hopkins Avenue, Jamestown, New York 14701, has 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, 1968 through February 28, 1971.

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on August 23, 1973, at 9:30 A.M. Applicant appeared by Ronald H. Jensen, Esq., of Jaeckle, Fleishmann and Mugel. The Sales Tax Bureau appeared by Edward H. Best, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUES

I. Whether applicant, Hope's Windows, is a fabricator, exempt from the imposition of the use tax in accordance with the meaning and intent of section 1110 of the Tax Law.

II. Whether the stock items and custom-made non-installed items sold by applicant, Hope's Windows, in the regular course of its business, are the same kind of tangible personal property sold by applicant as custom-made installed items within the meaning and intent of section 1110(B) of the Tax Law.

III. Whether the method used by the Sales Tax Bureau in computing the use tax due from applicant, Hope's Windows, was inequitable and produced a result contrary to the meaning and intent of section 1110 of the Tax Law.

IV. Whether section 1110 of the Tax Law as applied to the activities of applicant, Hope's Windows, is contrary to the proscriptions of the United States and New York State Constitutions.

V. Whether applicant, Hope's Windows, had reasonable cause for failing to pay the use tax assessed.

FINDINGS OF FACT

1. On August 28, 1972, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Hope's Windows, for the period March 1, 1968 through February 28, 1971, in the sum of \$64,899.08, plus penalties and interest of \$23,591.78, for a sum total of \$88,490.86. Said amount is the use tax due on value added to tangible personal property sold and installed by applicant.

2. Applicant, Hope's Windows, is engaged in the business of making and installing curtain walls, custom-made metal and aluminum windows and door frames for non-residential construction. Its Business is concentrated in the "architectural market", which consists of commercial, institutional

and educational buildings which are specially designed by architects. Applicant frequently acts as a subcontractor responsible for the furnishing and installing of frames for exterior openings in buildings for doors and windows. The frames are usually custom-made to the architect's demanding specifications.

3. The windows and door frames are made from hot rolled steel sections, aluminum extrusions and sheets of steel purchased from various steel and aluminum manufacturers. The steel sections and aluminum extrusions are obtained from the manufacturer in standard lengths, first cut to the length specified in the material list pertaining to the particular job. The ends of the lengths are coped and, after necessary holes are punched, the lengths are welded together into frames in accordance with specifications. The sheet steel is cut to size, coped, punched with holes, and bent in a press into channel shaped metal lengths, subsequently welded together to form a frame. In the vast majority of cases the applicant does not include glazing in the production process, leaving this task to another subcontractor. Often the production process includes the installation of joint bars or door butts, noise control insulation and insulated and thermal frames.

4. Most of the custom-made frames are installed by applicant, Hope's Windows, in its position as a subcontractor. The remainder of the frames are simply furnished and delivered. During the period in question, approximately 90% of applicant's New York State revenue derived from contracting activities, was attributable to "furnish and install" contracts involving custom-made frames. The remainder of its contract revenue was attributable to "furnish and deliver" contracts. Said "furnish and

deliver" contracts often involved the production of custom-made frames. These sales are generally made to dealers, building supply houses or general contractors.

5. Applicant, Hope's Windows, also has a small inventory of standard residential frames. These standard frames are sold in straight sales without installation on which applicant properly charges a sales tax.

6. In computing the use tax owed by applicant, Hope's Windows, the Sales Tax Bureau adopted as a use tax base the invoice price of the custom-made installed jobs, minus costs for freight, installation, commission and sales tax paid on materials comprising the frames as shown on applicant's internal copy of the invoice. The resulting figure was approximately the price at which the jobs would have been sold without installation. Applicant offered in evidence no alternative method of computation that would more accurately reflect the amount of use tax due under the proscriptions of section 1110 of the Tax Law.

7. Applicant, Hope's Windows, alleged that if its activities involving custom-made installed frames is determined to be within the purview of section 1110 of the Tax Law, then said statute violates the "Due Process" and "Equal Protection" clauses of the United States and New York State Constitutions. Applicant further alleged that if said statute is applied retroactively to periods ending before May 10, 1969, the date the 1969 amendment to section 1110 of the Tax Law became effective, said retroactive imposition would be unconstitutional in accordance with the proscriptions of the United States and New York State Constitutions.

8. Applicant, Hope's Windows, contends that it has acted reasonably and in good faith in opposing the assessment in issue, and, therefore, all penalties and interest imposed in excess of the minimum provided by law should be abated.

CONCLUSIONS OF LAW

A. That the materials applicant, Hope's Windows, uses in the production of its window frames, door frames and curtain walls lose their identity once they are incorporated in applicant's finished product. Applicant, therefore, manufactures and does not "fabricate" its products, and is consequently not exempt from the use tax in accordance with the meaning and intent of section 1110 of the Tax Law.

B. That the custom-made non-installed windows and door frames manufactured by applicant, Hope's Windows, as well as the frames that are not custom-made and those reserved as stock items, are "items of the same kind of tangible personal property" offered by applicant in the regular course of its business as the custom-made window and door frames installed by applicant. Therefore, applicant is liable for use tax on the difference between the price the contractor pays on the installed items and the price said contractor would have paid if said items were not installed, within the meaning and intent of section 1110 of the Tax Law.

C. That the computation of the use tax due from applicant, Hope's Windows, was equitable and computed according to the proscriptions of section 1110 of the Tax Law.

D. That the constitutionality of the laws of the State of New York are presumed at the administrative level of the State Tax Commission.

There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that section 1110 of the Tax Law is constitutional to the extent that it relates to the imposition of additional tax against applicant, Hope's Windows.

E. That applicant, Hope's Windows, had reasonable cause and acted in good faith in protesting and not paying the assessment in issue.

F. That the application of Hope's Windows is granted to the extent of cancelling the penalties and interest imposed in excess of the minimum provided by law; 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 August 28, 1972; and, that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
October 21, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER