

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SARATOGA TREE EXPERTS, INC.

Jack Burke and Ted Gray

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~year(s)~~ Period from
June 1, 1971 to May 31, 1974.

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

State of New York
County of Albany

Patricia A. Roberts, 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 29th day of March, 1976, she served the within
Notice of ~~Deficiency~~ (or Determination) by ~~(certified)~~ mail upon Saratoga Tree
Experts, Inc. ~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Saratoga Tree Experts, Inc.
Box 311
Elizabethtown, NY 12932

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

29th day of March, 1976.

Patricia A. Roberts

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SARATOGA TREE EXPERTS, INC.

Jack Burke and Ted Gray

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~XXXXXX~~ Period from
June 1, 1971 to May 31, 1974.

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

State of New York
County of Albany

Patricia A. Roberts, 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 29th day of March, 1976, she served the within
Notice of ~~Determination~~ (or Determination) by ~~registered~~ mail upon Jack Burke

~~(represented by the)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Jack Burke
Box 311
Elizabethtown, NY 12932

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 ~~(represented by the)~~
~~of~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(represented by the)~~ petitioner.

Sworn to before me this

29th day of March, 1976.

Patricia A. Roberts

Janet Mark

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SARATOGA TREE EXPERTS, INC.

Jack Burke and Ted Gray

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~years~~ Period from
June 1, 1971 to May 31, 1974.

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

State of New York
County of Albany

Patricia A. Roberts, 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 29th day of March, 1976, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Ted Gray

~~(Representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Ted Gray
Box 311
Elizabethtown, NY 12932

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)~~
~~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

29th day of March, 1976.

Janet Mack

Patricia A. Roberts

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SARATOGA TREE EXPERTS, INC.
Jack Burke and Ted Gray
For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period from
June 1, 1971 to May 31, 1974.

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

State of New York
County of Albany

Patricia A. Roberts, 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 29th day of March, 1976, she served the within
Notice of ~~Decision~~ (or Determination) by ~~certified~~ mail upon James G.

Dobie, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: James G. Dobie, Esq.
1 Elm Street
Malone, NY 12953

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

29th day of March, 1976.

Janet Mack

Patricia A. Roberts



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

DATED: Albany, New York
March 29, 1976

TELEPHONE: (518) 457-3850

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Saratoga Tree Experts, Inc.
Box 311
Elizabethtown, NY 12932

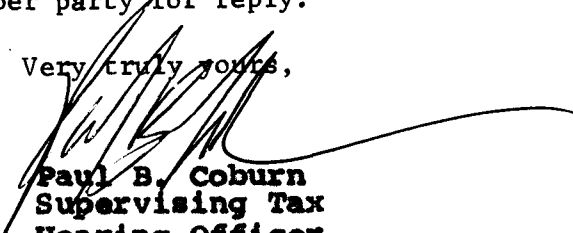
Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1139 & 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
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



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

DATED: Albany, New York
March 29, 1976

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

Mr. Jack Burke
Box 311
Elizabethtown, NY 12932

Dear Mr. Burke:

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

Please take further notice that pursuant to
Section(s) **1139 & 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,

Enc.

cc: Petitioner's Representative.

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

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

DATED: Albany, New York
March 29, 1976

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

Mr. Ted Gray
Box 311
Elizabethtown, NY 12932

Dear Mr. Gray:

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

Please take further notice that pursuant to
Section(s) **1139 & 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
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will be referred to the proper party for reply.

Very truly yours,


Paul B. 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	:	
SARATOGA TREE EXPERTS, INC.,	:	
Jack Burke and Ted Gray	:	DETERMINATION
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 from June 1, 1971 to May 31, 1974.	:	

Applicants, Saratoga Tree Experts, Inc., Jack Burke and Ted Gray, Box 311, Elizabethtown, New York 12932, have filed an application for a revision of a determination or for refund of sales or use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1971 to May 31, 1974. A formal hearing was scheduled for December 17, 1974, at 11:45 A.M. at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York. Prior to the formal hearing, applicants advised the State Tax Commission, in writing, that they waived a formal hearing. They requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record. Notice No. 90753121.

ISSUES

I. Did the rental of trucks, men and equipment for tree removal and trimming and other landscaping services by applicant, Saratoga Tree Experts, Inc., constitute a taxable service, or was it a non-taxable rental?

II. Was the sales tax paid by applicant, Saratoga Tree Experts, Inc. on purchases of vehicles, equipment and supplies for its business a proper sales tax credit?

FINDINGS OF FACT

1. On September 19, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use taxes due against applicants, Saratoga Tree Experts, Inc., Jack Burke and Ted Gray, in the sum of \$7,086.98.

2. During the period from June 1, 1971 through May 31, 1974, applicant, Saratoga Tree Experts, Inc., was a domestic corporation which entered into written contracts with the New York Telephone Company under which it agreed to perform the tasks of trimming trees, removing trees, cutting brush and general clearing of rights of way for telephone lines.

3. During the period in issue applicant, Saratoga Tree Experts, Inc., also did a great deal of work for individual owners consisting of planting trees, spraying, pruning and other landscaping work.

4. During the period in issue applicant, Saratoga Tree Experts, Inc., charged an hourly rate for the men who did the work, and for the trucks and equipment used in fulfilling each contract. It charged and collected New York State sales tax on its gross billings. It paid retail sales taxes on the trucks, equipment and supplies it purchased for use in its business. Trucks were furnished by it with drivers, gasoline and supplies. There was no separate charge for rental of the trucks alone.

5. Jack Burke and Ted Gray were responsible officers of Saratoga Tree Experts, Inc. during the periods in issue.

CONCLUSIONS OF LAW

A. That during the period from May 1, 1971 through May 31, 1974, applicant, Saratoga Tree Experts, Inc., was engaged in the business of landscaping and not in the business of leasing vehicles.

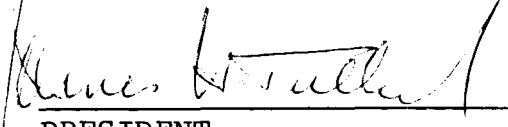
B. That the undifferentiated gross charges of the applicant, Saratoga Tree Experts, Inc., during the period in issue constituted taxable sales of services and not rentals of equipment.


C. That the purchases of vehicles, gasoline, supplies and repairs to the aforesaid vehicles during the period in issue were subject to retail sales tax payable by applicant, Saratoga Tree Experts, Inc.

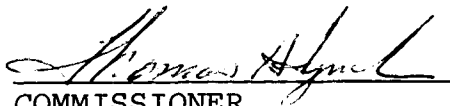
D. That the application of Saratoga Tree Experts, Inc., Jack Burke and Ted Gray, for a refund of sales tax is denied in all respects and the Notice of Determination and Demand for payment of sales and use taxes due issued September 19, 1974 is sustained.

DATED: Albany, New York
March 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER