

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AIRD ISLAND, 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 and 29 of the  
Tax Law for the ~~XXXXX~~ or Period(s)  
August 31, 1971-February 29, 1972

State of New York  
County of Albany

Denise Burke, 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 12th day of August, 1976, she served the within  
Notice of Determination by (~~certified~~) mail upon Aird Island, Inc.

(~~representative of the~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Aird Island, Inc.  
North Broadway at Bridge Street  
Box 4087  
Albany, New York 12204  
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

12th day of August, 1976

Denise Burke

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AIRD ISLAND, 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 and 29 of the :  
Tax Law for the ~~Years~~ or Period(s) :  
August 31, 1971-February 29, 1972

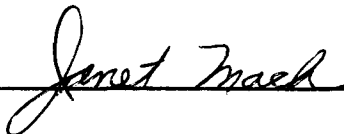
State of New York  
County of Albany

Denise Burke , 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 12th day of August , 1976 , she served the within  
Notice of Determination by (~~certified~~) mail upon Melvin B. Schulman,  
C.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: Melvin B. Schulman, C.P.A.  
583 New Scotland Avenue  
Albany, New York 12208  
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

12th day of August , 1976.

  
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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

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

**August 12, 1976**

┌  
**Aird Island, Inc.**  
**North Broadway at Bridge Street**  
**Box 4087**  
**Albany, New York 12204**

**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**  
**Supervising Tax**  
**Hearing Officer**

Enc.

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	:	
AIRD ISLAND, INC.	:	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 August 31, 1971	:	
through February 29, 1972	:	

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Applicant, Aird Island, Inc., North Broadway at Bridge Street, Box 4087, Albany, New York 12204, 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 August 31, 1971 through February 29, 1972.

A formal hearing was held at the offices of the State Tax Commission, Albany, New York, on July 18, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Melvin B. Schulman, C.P.A., and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

Was the taxpayer entitled to credits or refunds of sales tax where there was only 1) partial payment of a general account with no payments on subsequent sales or taxes had thereafter 2) partial payment on identified sales, 3) partial payments throughout on sales on general accounts.

FINDINGS OF FACT

1. The taxpayer, Aird Island, Inc., timely filed New York State sales and use tax returns for the period August 31, 1971 through February 29, 1972.

2. A Notice of Determination of sales and use taxes and penalties for the period August 31, 1971 through February 29, 1972, for an amount of \$1,023.71, was issued on December 20, 1973, against Aird Island, Inc. under Notice No. 90,732,801.

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

The taxpayer made sales of building materials to contractors and failed to receive payment in various types of situations. The worksheets and records reflect the following categories:

(a). The taxpayer made sales on credit to certain purchasers and received no payment at all.

(b). The taxpayer made sales on credit to certain purchasers on open account, received payments to a certain date and thereafter received no payments at all but made certain sales thereafter with no payments forthcoming for tax or material.

(c). The taxpayer made sales on open account throughout the tax audit period and received partial payments on the open account throughout the tax audit period.

(d). The taxpayer made sales on account of certain materials to contractors for certain identifiable jobs and payments on account were made especially for these specific materials sold for the identifiable jobs. This is a common practice on supplies sold to preserve the job free from liens.

#### OPINION

In each situation the Sales Tax Bureau asserts sales tax is due first on all materials sold without any distinction with respect

to modes of payment. The taxpayer on the other hand asserts that all of the monies received must be applied ratably to taxes and accounts receivable. A review of the law and the information letters of the Bureau convinces us that neither position is totally correct.

(a). Where the taxpayer made a sale to certain purchasers and collected no money whatsoever, no tax can be exacted from the vendor.

(b). Where the taxpayer made sales on credit to certain purchasers on open account, and received payments to a certain date and thereafter received no payments at all on subsequent sales, no tax may be charged on the subsequent sales because there was no receipt in any way for the subsequent sales, but the burden is on the taxpayer to establish these facts.

(c). Where the taxpayer made sales on open account to certain purchasers throughout the audit period and received payments on open account throughout the audit period all sales taxes on all the items sold are due, at least to the extent of all payments made. The payments which exceed taxes of the purchaser may be applied to payment of materials purchased.

(d). Where the taxpayer made sales on account of certain materials to contractors for certain identifiable construction jobs and payments on account were specially made for specific materials or invoices, the payments are applicable first to the tax on those specific materials and invoices and the balance to pay for the materials on those invoices. This situation involves construction liens and trust concepts and clearly the funds cannot be diverted to other invoices and taxes. Here again the burden of proof is on the taxpayer.

We also note in passing that since December 1, 1974, Regulation Number 525.5 concerning cancelled sales, returned merchandise and bad debts has been in effect. This decision does not restrict that regulation.

The taxpayer has acted in good faith. In this case the categories have been worked out by the parties.

CONCLUSIONS OF LAW

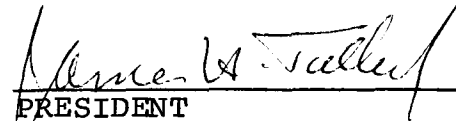
A. The deficiencies in sales tax shall be recomputed in accordance with the above opinion for the various categories of accounts receivable.

B. The taxpayer having acted in good faith, the penalties are cancelled.

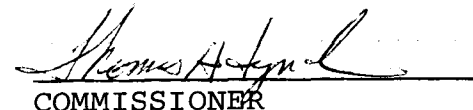
C. Pursuant to the Tax Law, interest shall be due on the sales tax until paid.

DATED: Albany, New York  
August 12, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER