

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ADIRONDACK CONSTRUCTION CORP.

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 ~~Year(s)~~ or Period(s) :
12/1/66 - 2/28/70

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 27th day of September, 1976, she served the within
Determination by ~~(certified)~~ mail upon Adirondack Construction
Corp. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Adirondack Construction Corp.
73-95 Mohican Street
Glens Falls, NY 12801

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

27th day of September , 1976.

Mary L. Hoff

Janet Mack



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

September 27, 1976

TELEPHONE: (518) 457-3850

Adirondack Construction Corp.
73-95 Mohican Street
Glens Falls, NY 12801

Gentlemen:

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

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

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ADIRONDACK CONSTRUCTION CORP.	:	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 December 1, 1966 through February 28,	:	
1970.	:	

Applicant, Adirondack Construction Corp., 73-95 Mohican Street, Glens Falls, New York 12801, 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 December 1, 1967 through February 28, 1970. (Identification No. 14-1327569). A small claims hearing was held June 18, 1976 at 9:15 A.M. before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York. The applicant appeared by Joseph Werblow, vice president of the corporation. The Sales Tax Bureau appeared by Peter J. Crotty, Esq. (Solomon Sies, Esq., of counsel).

ISSUE

Whether the transportation expense for concrete is allowable where such expense is not separately stated on billings.

(2)

FINDINGS OF FACT

1. Applicant, Adirondack Construction Corp., timely filed sales and use tax returns for the periods involved. The return for the period ending February 28, 1970 indicated a tax due of \$812.61. Applicant took a credit of \$1,626.38 resulting in a request for refund of \$813.77. The credit reflects sales tax on transportation charges of \$3.50 per cubic yard of concrete purchased. The Sales Tax Bureau denied the refund because the transportation charges were not separately stated on billings.

2. Applicant, Adirondack Construction Corp.'s only contention was that the corporation was being unfairly penalized because the Sales Tax Bureau failed to inform it as to requirements and pertinent matters peculiar to this issue.

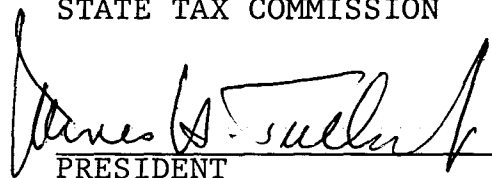
CONCLUSIONS OF LAW

A. That transportation charges were not separately stated on billings as specifically required by section 1101(b)(3) of the Tax Law in order to be exempt from tax.

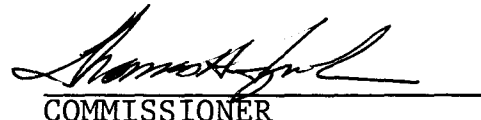
B. That the application of Adirondack Construction Corp. is denied and the Notice of Refund Denial is sustained.

DATED: Albany, New York
September 27, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER