

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THEODORE S. WIND

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, 1971 through February 12,
1972.

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 19th day of July, 1976, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Theodore S. Wind

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Theodore S. Wind
94 Church Street
Little Falls, NY 13365

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

19th day of July, 1976.

STATE OF NEW YORK
STATE TAX COMMISSION

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of

THEODORE S. WIND

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Tax Law for the ~~Year(s)~~ Period
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1972.

State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 19th day of July, 1976, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Joseph A. Santry, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

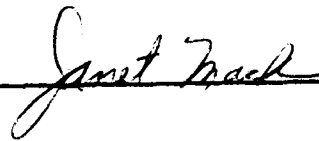
wrapper addressed as follows: Joseph A. Santry, Esq.
207-209 Burrell Building
Little Falls, NY 13365

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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

19th day of July, 1976.





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

July 19, 1976

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

Mr. Theodore S. Wind
94 Church Street
Little Falls, NY 13365

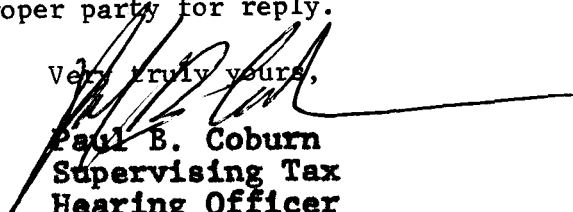
Dear Mr. Wind:

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

STATE TAX COMMISSION

In the Matter of the Application

of

THEODORE S. WIND

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, 1971 through
February 12, 1972.

Applicant, Theodore S. Wind, 94 Church Street, Little Falls,
New York 13365, filed an application for refund of sales and use
taxes under Articles 28 and 29 of the Tax Law for the period
December 1, 1971 through February 12, 1972. The application was
denied. The taxpayer, in writing, waived a formal hearing. The
case was submitted to the State Tax Commission for a decision
based upon the information contained in the file.

ISSUE

Whether applicant, Theodore S. Wind, is entitled to a refund
of sales tax paid for capital improvements where the invoice
listed an amount due for materials which was labelled to show
that it included a sales tax.

FINDINGS OF FACT

1. Applicant, Theodore S. Wind, had capital improvement work performed on his residence during 1971 and 1972. The work was done by a contractor, Donald Duxtader, who remodeled a kitchen and a bathroom, and added a two-story addition.

2. The contractor billed applicant, Theodore S. Wind, in four separate invoices. Three of the bills listed a sales tax charge separately. The invoice dated December 1, 1971, listed an amount due for materials which was labelled to show that it included a sales tax. The sales tax on this invoice amounted to \$123.65. The invoices were paid by the applicant.

3. On October 3, 1974, applicant, Theodore S. Wind, filed an application for refund of the sales tax paid.

4. The application was denied in part by the Sales Tax Bureau on January 10, 1975. A refund in the amount of \$48.39 was authorized. The claim was denied to the extent of \$123.65.

CONCLUSIONS OF LAW

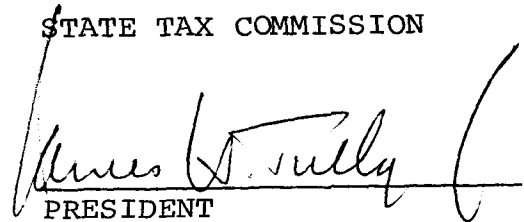
A. That a capital improvement is not a tax-exempt transaction. The contractor is responsible for sales tax on the materials used in the project. However, the fact that the

contractor on the December 1, 1971 invoice labelled the cost of materials as including sales tax is insufficient to allow a refund to applicant, Theodore S. Wind.

B. That the application of Theodore S. Wind is denied.

DATED: Albany, New York
July 19, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER