

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
YONKERS PLUMBING & HEATING SUPPLY CORP. :  
and :  
ABRAHAM N. BURACK, :  
Individually and as an Officer :  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :  
August 1, 1965 through May 31, 1970.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Catherine Steele, 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 13th day of August, 1976, she served the within Notice of Determination by ~~certified~~ mail upon YONKERS PLUMBING & HEATING SUPPLY CORP. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Yonkers Plumbing & Heating Supply Corp.  
166 Yonkers Avenue  
Yonkers, New York  
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

13th day of August, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of :  
YONKERS PLUMBING & HEATING SUPPLY CORP. :  
and :  
ABRAHAM N. BURACK, :  
Individually and as an Officer :  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
August 1, 1965 through May 31, 1970.

AFFIDAVIT OF MAILING

State of New York  
County of, Albany

Catherine Steele, 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 13th day of August, 1976, she served the within  
Notice of Determination by ~~certified~~ mail upon ABRAHAM N. BURACK

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Abraham N. Burack, Individually and as an Officer  
Yonkers Plumbing & Heating Supply Corp.  
166 Yonkers Avenue  
Yonkers, New York  
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

13th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
YONKERS PLUMBING & HEATING SUPPLY CORP.  
and  
ABRAHAM N. BURACK,  
Individually and as an Officer  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period(s)  
August 1, 1965 through May 31, 1970.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Catherine Steele, 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 13th day of August, 1976, she served the within  
Notice of Determination by ~~registered~~ mail upon ELI B. FINE, CPA

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Eli B. Fine, CPA  
31 South Broadway  
Yonkers, New York

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

13th day of August, 1976

Catherine Steele

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

August 13, 1976

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

Yonkers Plumbing & Heating Supply Corp.  
166 Yonkers Avenue  
Yonkers, New York

**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,

**Taul B. Osburn**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

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

August 13, 1976

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

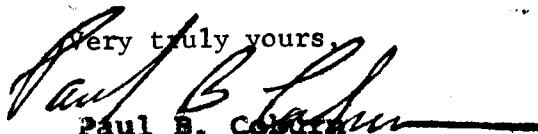
Abraham N. Burack, Individually and as an Officer  
Yonkers Plumbing & Heating Supply Corp.  
166 Yonkers Avenue  
Yonkers, New York

Dear Mr. Burack:

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. Cohen  
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	:	
	:	
YONKERS PLUMBING & HEATING SUPPLY CORP.	:	
and	:	DETERMINATION
ABRAHAM N. BURACK,	:	
Individually and as an Officer	:	
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 August 1,	:	
1965 through May 31, 1970.	:	

---

Applicants, Yonkers Plumbing & Heating Supply Corp. and Abraham N. Burack, individually and as an officer, 166 Yonkers Avenue, Yonkers, New York, filed applications for revision of a determination or for refund of sales or use taxes under Articles 28 and 29 of the Tax Law for the periods August 1, 1965 through May 31, 1970. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on April 13, 1972 (File No. 90748505) in the amount of \$7,494.14 plus interest and penalties of \$3,448.15 for a total of \$10,942.29.

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Paul B. Coburn, Hearing Officer, on October 1, 1974, at 9:15 a.m.

The applicants appeared by Eli B. Fine, C.P.A. The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

### ISSUES

I. Was the taxpayer, Yonkers Plumbing & Heating Supply Corp., entitled to a credit on a sales tax return filed after it was determined that the unpaid portion of an open account was uncollectible where the previous payments on the open account exceeded the sales tax on taxable sales on that account?

II. Were payments received on open account to be applied first to payment of the sales tax on the total credit sales made until the sales tax was paid in full before the applicant, Yonkers Plumbing & Heating Supply Corp., was allowed to apply payments to its costs?

### FINDINGS OF FACT

1. Applicants, Yonkers Plumbing & Heating Supply Corp. and Abraham N. Burack, individually and as an officer, made timely application for refund of the sales and use taxes which were the subject of the sales and use tax audit for the period August 1, 1965 through May 31, 1970.

2. Abraham N. Burack was president of the applicant, Yonkers Plumbing & Heating Supply Corp., during the period in question and was an active and responsible officer of the corporation.

3. Applicant, Yonkers Plumbing & Heating Supply Corp., made numerous and frequent sales of tangible personalty items to one Clemente Plumbing Co. throughout the period August 1, 1965 through February 28, 1969 on open account. On most of these sales, the applicant billed Clemente for sales tax. For some sales the applicant received an exemption certificate.

4. Throughout the period from August 1, 1965 through February 28, 1969, the applicant received payments of varying lump sums which were credited to the Clemente account. These payments exceeded the amount of sales tax due on the sales to Clemente during the period under review.

5. On February 24, 1969, Clemente made an assignment for the benefit of creditors. Applicant, Yonkers Plumbing & Heating Supply Corp., then wrote off the unpaid balance of the Clemente account as an uncollectible bad debt of \$120,163.12.

6. Applicant, Yonkers Plumbing & Heating Supply Corp., claimed a credit of \$4,245.25 for sales tax already paid on the Clemente debt that became uncollectible in the period ended February 28, 1969.

7. An audit by the Sales Tax Bureau disclosed that applicant, Yonkers Plumbing & Heating Supply Corp., had under-reported taxable sales by \$111,634.00 in the period under review.



CONCLUSIONS OF LAW

A. That the sale price taxable is the entire price whether received wholly in money, partly in credit allowed by the vendor, or wholly on credit. Section 1101(b) (3) of the Tax Law so defines "receipt". The sales tax is due and payable on a "sale" as defined in section 1101(b) (5).

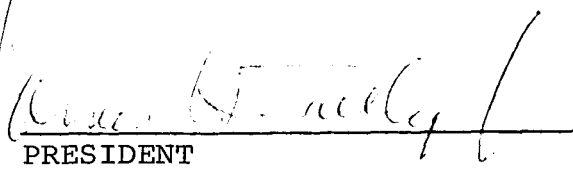
B. That section 1132(d) of the Tax Law provides that the assumption that the first cash received by the vendor is for the entire sales tax can be overcome only by the State Tax Commission by regulation. Prior to November, 1974, when the regulation was amended effective December 1, 1974, 20 N.Y.C.R.R. 525.5 provided that uncollectible accounts shall reduce gross sales only where the vendor would otherwise lose money by being required to pay the State more than he had collected from the purchaser. The applicant, Yonkers Plumbing & Heating Supply Corp., in this case does not meet that test.


C. That the taxpayers failed to sustain the burden of proof for sales claimed as tax exempt because made for capital improvements or to exempt institutions and for which the taxpayer produced no tax exemption certificates.

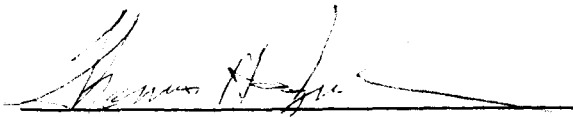
D. That the applications are denied.

DATED: Albany, New York  
August 13, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER