

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ZARET CONSTRUCTION CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
June 1, 1968 - May 31, 1973.

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 4th day of October, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Zaret 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: Zaret Construction Corp.
60 Morrow Avenue
Scarsdale, New York 10583

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)~~
~~xxxthe~~ 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

4th day of October, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ZARET CONSTRUCTION CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
June 1, 1968 - May 31, 1973.

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 4th day of October, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Warren Lesser, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Warren Lesser, CPA
Lesser, Friedman & Wexler
733 Third Avenue
New York, New York 10017

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

4th day of October, 1976.

Catherine Steele

Janet Mack



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

October 4, 1976

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

Zaret Construction Corp.
60 Morrow Avenue
Scarsdale, New York 10583

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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Application :
of :
ZARET CONSTRUCTION CORP. :
for Revision of a Determination or : DETERMINATION
for Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Period June 1, 1968 - May 31, 1973.

Applicant, Zaret Construction Corp., 60 Morrow Avenue, Scarsdale, New York, 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 June 1, 1968 - May 31, 1973. A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, at the office of the State Tax Commission, Two World Trade Center, New York, New York, on June 8, 1976. Applicant appeared by Irving Zaretsky, President of Zaret Construction Corp., and Warren Lesser, C.P.A. The Sales Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

Whether sales and use taxes were paid on the purchases of air conditioners incorporated into real property.

FINDINGS OF FACT

On May 9, 1967, the applicant, Zaret Construction Corp., entered into a contractual agreement with I. Wenig and Sons, Inc., for the purchase of a large volume of air conditioning units. Subsequently, I. Wenig and Sons, Inc. formed another entity called Hydronic Industries Inc. and assigned the original purchase contract to that corporation.

Upon audit, the Sales Tax Bureau held that sales and use taxes were not paid on these purchases and issued a "Notice of Determination and Demand for Payment of Sales and Use Taxes Due" dated April 10, 1974.

The applicant contends that the sales and use tax was included in the net price of each unit, and that therefore, the sales and use taxes were properly paid to Hydronic Industries, Inc.

Applicant's contracts with I. Wenig & Sons, Inc., and Hydronic Industries, Inc., contained the phrase, "Prices quoted above are net." Applicant asserts that this phrase clearly demonstrated their contention that the contract provided for a flat price inclusive of all sales taxes.

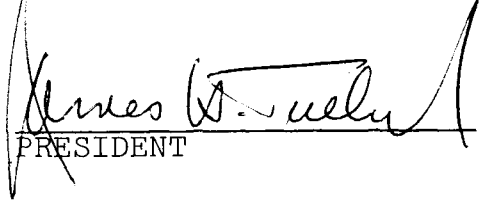
CONCLUSIONS OF LAW

A. No documentary evidence was submitted to show that the sales and use taxes were actually paid or included in the net purchase price. The phrase, "Prices quoted above are net," is not a true index of the ingredients that make up the quoted net price.

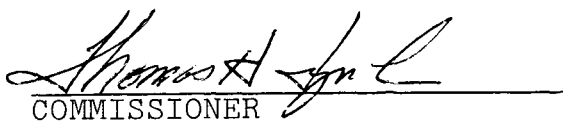
B. Accordingly, the application of Zaret Construction Corp. is denied and the "Notice of Determination and Demand for Payment of Sales and Use Taxes Due" issued April 10, 1974 is sustained.

DATED: Albany, New York
October 4, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER