

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRISON RAILWAY SUPPLY 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 & 29 of the
Tax Law for the ~~Year(s)~~ or Period(s)
8/1/65 through 2/28/69

State of New York
County of

Carmen M. Mottolese, 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 25th day of June, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Morrison Railway
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: Morrison Railway Supply Corp.
10 Lafayette Square
Buffalo, 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

25th day of June, 1976

Carmen M. Mottolese

Janet Mark



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

June 25, 1976

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

┌ Morrison Railway Supply Corp.
10 Lafayette Square
Buffalo, New York

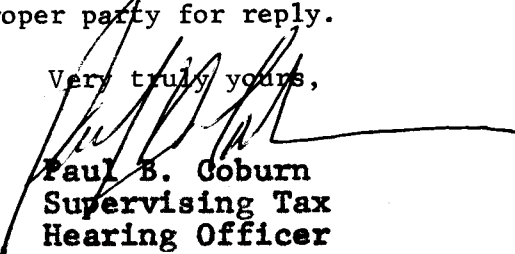
Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 & 1250** 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: ~~Taxing Bureau's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MORRISON RAILWAY SUPPLY CORP.	:	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 1, 1965 through	:	
February 28, 1969.	:	

Applicant, Morrison Railway Supply Corp., 10 Lafayette Square, Buffalo, New York, 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 1, 1965 through February 28, 1969. (File No. 16-0560180).

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on February 8, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer appeared by E. B. Heller, taxpayer's vice president. The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan, Esq., of counsel).

ISSUE

Is the vendor liable for interest incurred due to late payment of sales tax when purchaser presented vendor with a purported exemption certificate?

FINDINGS OF FACT

1. The taxpayer, Morrison Railway Supply Corp., timely filed New York State sales and use tax returns for the period August 1, 1965 through February 28, 1969.

2. A Notice of Determination of sales and use taxes including interest computed at six percent per annum and penalties thereon for the period August 1, 1965 through February 28, 1969, was issued on January 5, 1970, against Morrison Railway Supply Corp., under Notice No. 90,741,221.

3. The applicant, Morrison Railway Supply Corporation, sells railroad cars and performs remedial maintenance on the equipment it sells. During the period in question, the applicant performed such maintenance for E. I. Dupont DeNemours & Company (Dupont) of Wilmington, Delaware, which made taxable purchases of materials from the applicant in the course of these repairs. The applicant did not collect any tax since Dupont presented it a purported exemption certificate.

4. On audit, the applicant was informed that the Dupont certificate was not valid for the purpose of exempting Dupont from payment of tax on the transactions in question.

5. The applicant paid the tax and interest due. Dupont thereafter reimbursed the applicant for the tax paid but failed to pay any of the \$890.00 in interest computed on the tax due.

CONCLUSIONS OF LAW

A. That, the applicant, Morrison Railway Supply Corporation, was liable for interest due on late tax payment and was properly required to pay such interest. The applicant was a vendor of tangible personal property and was required to collect sales tax. By virtue of section 1133 of the Tax Law, persons required to collect tax are personally liable for the tax imposed. Section 1145(a) of the Tax Law imposes penalties and interest on any person failing to pay or pay over any tax to the Tax Commission within the period required by law. Under the law in effect prior to September 1, 1973, the Tax Commission may not remit interest imposed at the rate of six percent per year upon delinquent taxes.

B. That, the petition is denied.

DATED: Albany, New York

June 25, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER