

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MANDELL & CORSINI, INC. & :

AFFIDAVIT OF MAILING

PAUL MANDELL, Individually

For a Redetermination of a Deficiency or :

a Revision of a Determination or a Refund

of Sales and Use :

Taxes under Article(s) 28 & 29 of the

Tax Law for the Year(s) or Period(s) :

3/1/70 to 2/28/74.

State of New York

County of Albany

Donna Scranton, 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 10th day of September, 1976, she served the within

Notice of Determination by ~~(certified)~~ mail upon Mandell & Corsini, Inc. & Paul Mandell,

Individually ~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Mandell & Corsini, Inc.
Paul Mandell, Individually
850 Third Avenue
New York, 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

10th day of September, 1976

Donna Scranton

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MANDELL & CORSINI, INC. &
PAUL MANDELL, Individually
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the Year(s) or Period(s)
3/1/70 to 2/28/74.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Donna Scranton , 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 10th day of September , 1976, she served the within Notice of Determination by ~~(certified)~~ ~~xxxxxxx~~ mail upon Paul J. Henry, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Paul J. Henry, Esq.
Breed, Abbott & Morgan
One Chase Manhattan Plaza
New York, New York 10005 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

10th day of September , 1976

Janet Mack

TA-3 (2/76)



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

September 10, 1976

TELEPHONE: (518) 457-3850

┌ Mandell & Corsini, Inc.
Paul Mandell, Individually
850 Third Avenue
New York, 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: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MANDELL & CORSINI, INC.	:	
and	:	DETERMINATION
PAUL MANDELL, Individually	:	
for a Hearing to Review a Determination	:	
of Taxes Due, or Denying a Refund of,	:	
Sales and Use Taxes under Articles 28	:	
and 29 of the Tax Law for the Period	:	
March 1, 1970 to February 28, 1974.	:	

Mandell & Corsini, Inc. and Paul Mandell, individually, 850 Third Avenue, New York, New York, filed an application under sections 1138 and 1250 of the Tax Law for a hearing to review a determination of sales taxes due under Articles 28 and 29 of the Tax Law for the period March 1, 1970 to February 28, 1974. Said determination was asserted by notice on September 13, 1974 under consent extending the limitation period and is in the amount of \$12,507.19 plus penalty and interest of \$3,830.32 for a total of \$16,337.51.

A hearing was duly held on March 10, 1976 at the offices of the State Tax Commission, Two World Trade Center, New York City, before Nigel G. Wright, Hearing Officer. The applicant was

represented by Paul J. Henry, Esq. of Breed, Abbott & Morgan. The Sales Tax Bureau was represented by Peter Crotty, Esq., appearing by Alexander Weiss, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the applicant was furnishing heat or a heating service and whether such would be subject to tax under section 1105(b) of the Tax Law.

FINDINGS OF FACT

1. Applicant, Mandell & Corsini, Inc., has its principal place of business at 850 Third Avenue, New York, New York.
2. Applicant is a mechanical contractor. Its business is to install heating, ventilating and air conditioning systems in hospitals, schools, office buildings and other buildings which are in the process of being newly constructed. Many of these buildings are built for governmental and charitable organizations which would be exempt from sales and use taxes.
3. Part of applicant's duties, after heating ducts are installed and before a certificate of occupancy has been issued for the building, is to furnish a watchman when necessary to ensure the continued operation of the heating system. This must be done when the finishing trades are in the building using

indoor materials which are not intended to withstand temperatures below fifty degrees. The watchmen would be furnished on each site according to the construction stage of the building and the outside temperature. The persons hired as watchmen are generally, under union rules, older men who are former steamfitters but who cannot or do not wish to do the physical labor required of a steamfitter. They are paid at a rate twenty-four percent less than the rate for a steamfitter.

4. The applicant billed for the watchmen on the basis of hourly gross wage, including amounts for withheld taxes, plus usually ten or fifteen percent for overhead and profit. These billings were separate from any billings for services under the applicant's contract for the building job. These billings were shown on applicant's books as "temporary heating".

5. Applicant purchases no fuel for use on construction sites.

6. The determination under review is based upon a test of applicant's books for a short period and a projection from the results of that test over the whole audit period. Applicant has now produced exact figures for the receipts here in question. These total \$112,334.53.

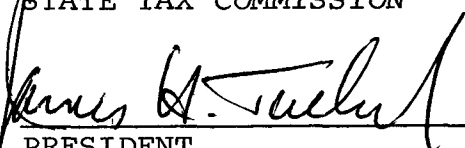
CONCLUSIONS OF LAW

A. That applicant is not subject to tax. Applicant furnishes no heat or heating service of any kind. The receipts here in issue are not subject to sales tax under section 1105(b) of the Tax Law.

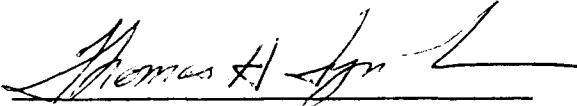
B. That the determination under review is erroneous in its entirety and is cancelled.

DATED: Albany, New York
September 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER