

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN GRACE WEATHER SERVICE, INC. :
(Purchaser)

AFFIDAVIT OF MAILING

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)~~ Period(s) :
June 1, 1966 through May 31, 1969.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 19 78 he served the within
Notice of Determination by ~~(certified)~~ mail upon John Grace Weather
Service, Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John Grace Weather Service, Inc.
34 Washington Parkway
Hicksville, New York

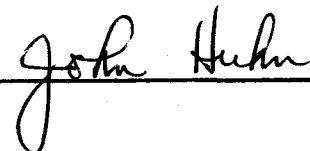
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of August , 1978.





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JOHN GRACE WEATHER SERVICE, INC.
(Purchaser)

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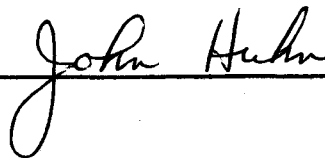
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August, 1978, he served the within
Notice of Determination by (certified) mail upon Erwin Popkin
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Erwin Popkin, Esq.
Suite 302, IBM Building
1399 Franklin Avenue
Garden City, New York 11530
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 August, 1978







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 25, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**John Grace Weather Service, Inc.
34 Washington Parkway
Hicksville, New York**

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
JOHN GRACE WEATHER SERVICE, INC. : DETERMINATION
(Purchaser) :
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, 1966 through May 31, :
1969. :
:

Applicant, John Grace Weather Service, Inc. (Purchaser),
34 Washington Parkway, Hicksville, New York, filed an applica-
tion 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, 1966 through May 31, 1969 (File No. 01122).

A small claims hearing was held before Joseph A. Milack,
Hearing Officer, at the offices of the State Tax Commission, Two
World Trade Center, New York, New York, on March 2, 1977. Appli-
cant appeared by Erwin Popkin, Esq. The Sales Tax Bureau appeared
by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether applicant as the purchaser in a bulk transfer, is
liable for unpaid sales tax due from Weather Service, Inc., the
seller, in accordance with section 1141(c) of the Tax Law.

FINDINGS OF FACT

1. Applicant, John Grace Weather Service, Inc., purchased the assets of Weather Service, Inc. on March 18, 1969 for \$3,100.00.

2. On March 31, 1969, a Notification of Sale, Transfer or Assignment in Bulk was mailed to the Sales Tax Bureau by the seller, Weather Service, Inc. Said Notice did not specify the total purchase price of the assets. On September 19, 1969, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, John Grace Weather Service, Inc., in the amount of \$12,649.33, plus interest and penalty. The amount determined to be due by the Sales Tax Bureau consisted of allegedly unpaid sales tax due on purchases made by the seller during the period June 1, 1966 through May 31, 1969. The Notice was issued in accordance with section 1141(c) of the Tax Law.

3. The sales agreement stated that the purchase price of \$3,100.00 for Weather Service, Inc. was to be placed in escrow specifically earmarked for potential New York sales tax liabilities. However, the money eventually was awarded to the Federal Government after litigation concerning the priority of tax liens between New York State and the United States in the United States District Court, Eastern District of New York.

4. Applicant conceded that \$14,647.41 in merchandise had been purchased by the seller for the period June 1, 1966 through March 18, 1969, but contended that a majority of these purchases already included sales tax since Weather Service, Inc.'s business was the sale and installation of air conditioners, which constituted a

capital improvement to real property. Consequently (applicant argued), the sales tax liability of the seller (Weather Service, Inc.) did not exceed \$750.00. However, no documentary evidence was submitted by applicant to show that the sales tax due should not exceed \$750.00.

CONCLUSIONS OF LAW

A. That the Notification of Sale, Transfer or Assignment in Bulk was not properly filed "at least ten days before taking possession of the subject of said sale..." in accordance with section 1141(c) of the New York Tax Law.

B. That upon the failure of applicant, John Grace Weather Service, Inc., the purchaser, to comply with the ten-day notice provision of section 1141(c) of the Tax Law, said applicant is subject to the sales tax liabilities of the seller to the extent of the purchase price, as prescribed by section 1141(c) of the Tax Law.

C. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 19, 1969 is reduced to \$3,100.00, but that except for such reduction, the application of John Grace Weather Service, Inc. is otherwise denied.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER