

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS J. GREENWOOD & CO., INC.

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 and 29 of the  
Tax Law for the ~~Year(s)~~ Period(x)  
September 1, 1970 through August 31, 1973.

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 13th day of December, 1978, he served the within  
Notice of Determination by ~~(certified)~~ mail upon Francis J. Greenwood &  
Co., Inc. ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Francis J. Greenwood & Co., Inc.  
12 Beekman Street  
Inwood, Long Island, New York 11696

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 December, 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANCIS J. GREENWOOD & CO., INC. :

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For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 and 29 of the :  
Tax Law for the ~~XXXX(s)XXX~~ Period ~~(x)~~ :  
September 1, 1970 through August 31, 1973.

State of New York  
County of Albany

John Huhn , 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 December , 1978, ~~she~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon James A. Math  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: James A. Math, Esq.  
114 Old Country Road  
Mineola, New York 11501

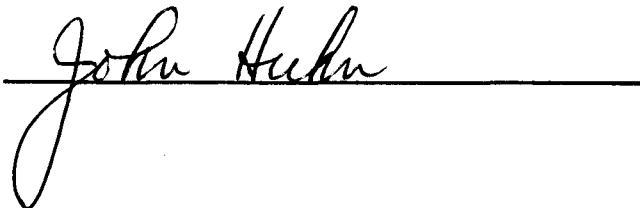
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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 December , 1978







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

**December 13, 1978**

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

**Francis J. Greenwood & Co., Inc.**  
**12 Beekman Street**  
**Inwood, Long Island, New York 11696**

**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

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In the Matter of the Application	:	
of	:	
FRANCIS J. GREENWOOD & CO., INC.	:	DETERMINATION
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 September 1, 1970 through	:	
August 31, 1973.	:	
	:	

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Applicant, Francis J. Greenwood & Co., Inc., 12 Beekman Street, Inwood, Long Island, New York 11696, filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the period September 1, 1970 through August 31, 1973 (File No. 10098).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 14, 1977. Applicant appeared by James A. Math, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUES

I. Whether applicant properly reported sales tax credits on its sales tax returns for the period September 1, 1970 through August 31, 1973.

II. Whether the installation of oil burner guns constituted taxable repairs or capital improvements to real property.

FINDINGS OF FACT

1. On May 29, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Francis J. Greenwood & Co., Inc., for the period September 1, 1970 through August 31, 1973, in the sum of \$23,408.44. This amount consisted of additional tax due of \$18,390.37, plus penalty and interest of \$5,018.07.

2. The additional taxes due were arrived at as a result of an audit of applicant's books and records.

3. Applicant, Francis J. Greenwood & Co., Inc., is a contractor engaged in the installation of oil burners and boilers, and also does plumbing and heating work. A large portion of the business is done as a subcontractor for oil companies who furnish oil burners, burner guns, and boilers for installation by applicant.

4. The aforesaid audit resulted in the following findings by the Sales Tax Bureau:

(a) an analysis of purchases for the test month of November, 1972 disclosed that applicant pays sales tax on all purchases of materials; however, on the quarterly sales tax returns filed, applicant deducted all sales tax paid on said purchases from the sales taxes collected and due.

(b) an analysis of sales for the test month disclosed both capital improvement installations and repair jobs. In billing oil companies for installations of oil burner guns, applicant classified these as repair sales and billed separately for labor, miscellaneous materials used and for sales tax on the cost of materials used. The Sales Tax Bureau's examiner considered said sales to be capital improvements and the sales taxes erroneous collections. Applicant also separately

billed the oil companies for sales tax on the cost of materials used in capital improvements. The examiner also held the above sales tax charges to be erroneous collections.

(c) the cost of materials used in reported repair sales were analyzed for the test month and were found to represent 3% of gross sales for the month. This percentage, applied to total sales for the audit period, resulted in an allowable credit of \$25,630.44 for the cost of materials used in repair sales. After allowance for the above credit, the examiner determined that applicant had a net taxable liability of \$152,736.41 in Nassau County and \$109,523.15 in New York City. The above amounts represent the cost of materials used in capital improvements. In addition, 1% in tax was assessed for materials purchased in Nassau County and used in New York City for the period September 1, 1970 through February 29, 1972. This was due to the 1% differential in the sales tax rate between Nassau County and New York City during that period. The net tax due for the audit period was \$18,390.37 (Nassau County, \$10,029.38, and New York City, \$8,360.99).

5. Applicant claimed that burner gun installations for oil companies should be considered repair jobs done as a subcontractor for the oil company for resale. However, applicant charged the oil company for sales tax on the materials used on the installation, in effect, passing along the sales tax that applicant paid on material purchases. The Sales Tax Bureau held these to be erroneous sales tax collections on capital improvements which (properly) should be remitted to the Sales Tax Bureau, along with the sales tax erroneously billed and collected on capital improvements.

CONCLUSIONS OF LAW

A. That applicant, Francis J. Greenwood and Co., Inc., did erroneously deduct as a credit on all sales tax returns filed during the period September 1, 1970 through August 31, 1973, all sales taxes paid on purchases of material during said period.

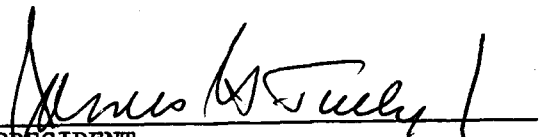
B. That an oil burner gun is an integral part of an oil heating system and as such, is considered to be a part of real property when installed; that the installation of an oil burner gun is a capital improvement. Applicant did improperly classify this type of installation as a nontaxable repair sale to a contractor for resale and did erroneously charge the prime contractor the sales tax applicant had paid on the materials used in said capital improvements.

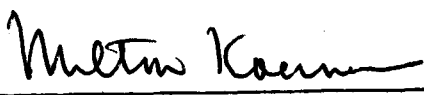
C. That the application of Francis J. Greenwood & Co., Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 29, 1974 is sustained.


DATED: Albany, New York

December 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER