

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RICHARD HAENSCHEN

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 ~~XXXXXXX~~ Period(s) Ended
May 31, 1969, November 30, 1969, August 31,
1971 and September 14, 1971.

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 20th day of September, 1978, ~~he~~ served the within

Notice of Determination by ~~certified~~ mail upon Richard Haenschen

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

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

as follows: Richard Haenschen
29 Cherry Lane
Chatham, New Jersey 07928

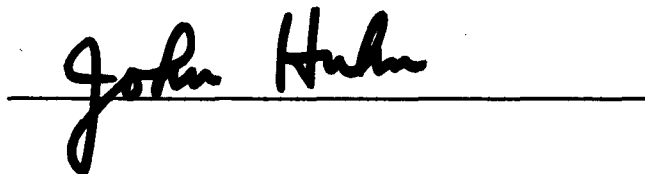
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

20th day of September, 1978.





STATE OF NEW YORK
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Tax Law for the ~~XXXXXX~~ Period(s) Ended:
May 31, 1969, November 30, 1969, August 31,
1971 and September 14, 1971.

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 20th day of September, 1978, he served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Joseph A. Kilbourn, Esq.

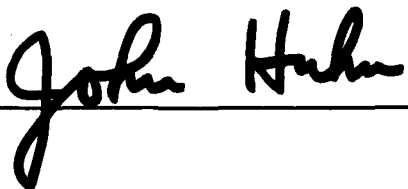
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph A. Kilbourn, Esq.
c/o Bigham, Englar, Jones & Houston
14 Wall Street
New York, New York 10005
and by depositing same enclosed in a postpaid 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

20th day of September, 1978







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

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

September 20, 1978

Richard Haenschen
29 Cherry Lane
Chatham, New Jersey 07928

Dear Mr. Haenschen:

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 CHYNOWETH
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
RICHARD HAENSCHEN	:	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 Periods ended May 31, 1969,	:	
November 30, 1969, August 31, 1971 and	:	
September 14, 1971, respectively.	:	

Applicant, Richard Haenschen, 29 Cherry Lane, Chatham, New Jersey 07928, 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 periods ended May 31, 1969, November 30, 1969, August 31, 1971 and September 14, 1971, respectively (File No. 00352).

A small claims hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 30, 1977 at 10:45 A.M. Applicant appeared by Joseph A. Kilbourn, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether credits reported by Hydronic Industries, Inc. on its sales tax returns for the periods ending May 31, 1969 and November 30, 1969 were properly disallowed by the Sales Tax Bureau.

II. Whether applicant, Richard Haenschen, an executive vice-president and treasurer of Hydronic Industries, Inc., was a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law, thereby making him individually liable for sales tax determined to be due from said corporation for the periods involved.

FINDINGS OF FACT

1. On May 22, 1972, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Richard Haenschen, as a responsible officer of Hydronic Industries, Inc. (hereinafter "Hydronic"), for taxes due of \$14,174.46 (plus interest) for the periods ended May 31, 1969, November 30, 1969, August 31, 1971 and September 14, 1971. The basis for the aforementioned Notice was a Notice and Demand for Payment of Sales and Use Taxes Due issued against Hydronic on December 15, 1971.

2. Hydronic manufactured combination heating and air-conditioning units. These units were mainly for use in multiple family dwellings and, because of the method of installation, became part of the realty. Hydronic did not install the units, but rather sold them to various contractors.

3. On the sales tax returns which it filed for the periods ending May 31, 1969 and November 30, 1969, Hydronic reported credits of \$3,345.40 and \$7,719.06, respectively, for sales taxes previously remitted on sales of heating and air-conditioning units, where the customer submitted a Certificate of Capital Improvement in lieu of paying the sales tax. The Sales Tax Bureau determined that since Hydronic did not install the units, the credits were not allowable.

Hydronic did not file sales tax returns for the period ending August 31, 1971 and for the period September 1, 1971 to September 14, 1971. Therefore, the Sales Tax Bureau determined taxes due for these periods of \$2,690.00 and \$420.00, respectively. These amounts were based on the average sales taxes reported on returns previously filed.

(The disallowed credits of \$11,064.46, plus the estimated taxes determined to be due for the periods for which Hydronic did not file sales tax returns of \$3,110.00, total \$14,174.46. This is the amount for which applicant was being held liable as a responsible officer.)

4. Hydronic was subsequently adjudicated bankrupt, pursuant to a petition filed in the United States District Court for the Southern District of New York on September 14, 1971. As a result of said bankruptcy proceedings, the Sales Tax Bureau received a dividend payment of \$1,216.25. The Sales Tax Bureau also received \$883.83, which represented a settlement payment of another officer for the period ending November 30, 1969.

5. Applicant, Richard Haenschen, joined Hydronic in 1968 as its treasurer and in 1969 became executive vice-president. He terminated his employment with Hydronic in May of 1970. He was a major shareholder of Hydronic. During that time, he signed sales tax returns.

6. Applicant argued that he should not be held responsible for the tax in question because the determination was made after he left Hydronic.

7. It was also advanced by applicant that due to the failure of the Sales Tax Bureau to make a prompt determination, the Sales Tax Bureau was unable to secure payment from Hydronic before it filed for bankruptcy; as a result, he was being held liable for non-payment.

CONCLUSIONS OF LAW

A. That the credits reported by Hydronic Industries, Inc. on its sales tax returns for the periods ending May 31, 1969 and November 30, 1969 were properly disallowed by the Sales Tax Bureau; that pursuant to section 1132(c) of the Tax Law, a vendor, upon being furnished with certain specific documents, shall not be required to collect tax from the customer. A Certificate of Capital Improvement is not one of the documents provided for in said section relieving the vendor of liability for collecting tax.

B. That applicant, Richard Haenschen, was a person required to collect tax and, therefore, he is liable for taxes due from Hydronic Industries, Inc. for the periods ended May 31, 1969 and November 30, 1969, in accordance with the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law; that applicant was not a person required to collect tax for the periods ended August 31, 1971 and September 14, 1971. The taxes due for said periods for which applicant was a person required to collect tax shall be reduced by the dividend payment of \$1,216.25 and the settlement payment of another officer of \$883.83.

C. That the application of Richard Haenschen is granted to the extent indicated in Conclusion of Law "B", above, and that, except as so granted, is all other respects denied.

DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER