

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAKEVIEW ELECTRIC, 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 ~~XXXXXX~~ Period ~~(X)~~
January, 1974 through November, 1975

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 20 day of September, 1978, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Lakeview Electric, Inc.


~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Lakeview Electric, Inc.
2452 East Lake Road
Livonia, New York 14487

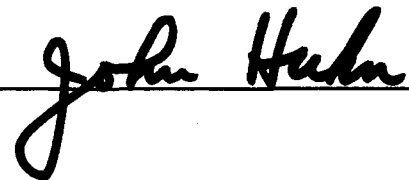
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

20 day of September, 1978





In the Matter of the Petition

of

LAKEVIEW ELECTRIC, 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 ~~XXXXXX~~ Period(s) :
January, 1974 through November, 1975

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 20 day of September, 1978, she served the within
Notice of Determination by ~~certified~~ mail upon Patrick J. Lane, Esq.

(representative of) the petitioner in the within proceeding,

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

as follows: Patrick J. Lane, Esq.
Dibble, Liveson & Lane
Suite 500, One Exchange Street
Rochester, New York 14614

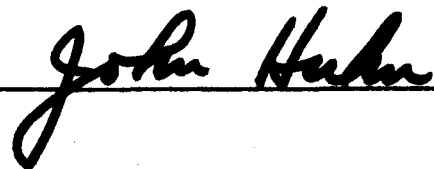
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

20 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

**Lakeview Electric, Inc.
2452 East Lake Road
Livonia, New York 14487**

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 CHRYMATT
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
LAKEVIEW ELECTRIC, 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 January, 1974 through :
November, 1975. :

Applicant, Lakeview Electric, Inc., 2452 East Lake Road, Livonia, New York 14487, 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 period January, 1974 through November, 1975 (File No. 14580).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 9, 1977 at 10:45 A.M. Applicant appeared by Patrick J. Lane, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether applicant entered into a contract with Facilities Development Corporation (a state agency) on or after September 1, 1974, thereby entitling applicant to a refund of sales taxes paid on the purchase of tangible personal property used in the performance of said contract.

FINDINGS OF FACT

1. On December 1, 1975, applicant, Lakeview Electric, Inc., filed an Application for Credit or Refund of State and Local Sales or Use Tax in the amount of \$819.00. Applicant requested a refund of \$371.99, on the grounds that it paid sales tax on purchases of tangible personal property used in constructing an addition to real property at the New York State Correctional Facility in Attica, New York. The work was completed in accordance with a lump-sum contract between applicant and Facilities Development Corporation (a state agency). The other items for which a refund was claimed are not at issue here.

2. The Sales Tax Bureau denied the refund, claiming that the contract with Facilities Development Corporation was bid and agreed to prior to the amendment of section 1115(a)(15) of the Tax Law which became effective September 1, 1974. Prior to the September 1, 1974 amendment, the Tax Law did not exempt purchases of tangible personal property used in improving the real property of an exempt organization, pursuant to a lump-sum capital improvement contract. The Sales Tax Bureau also based its denial of refund on a provision in the Specifications and Contractual - Legal Requirements (under the title Governing Laws and Regulations Administered by Other Departments): "All taxes pertaining to the work of the Contract must be paid. Address inquiries regarding taxes to the tax collecting agency." The Sales Tax Bureau argued that this provision included payment of sales tax on purchases of tangible personal property used for the electrical work at the State facility.

3. Applicant executed the aforementioned contract on August 13, 1974, while two New York State agencies, Facilities Development Corporation and the Design and Construction Group (Office of General Services), executed the agreement on August 29, 1974 and August 26, 1974, respectively. The lump-sum agreement of \$22,436.00 was approved by the Attorney General on September 3, 1974 and by the Comptroller on September 10, 1974.

4. Applicant argued that it was due a refund on the grounds that the contract was not legally binding and effective until September 10, 1974, when the Comptroller approved and filed the said document. According to section 112(2) of the State Finance Law, "Before any contract made for or by any state department, board, officer, commission, or institution, shall be executed or become effective, when such contract exceeds one thousand dollars in amount...it shall first be approved by the comptroller and filed in his office...." As a result, Lakeview Electric, Inc. contended that the lump-sum contract in question was effective on September 10, 1974, when approved and filed by the Comptroller, and, as a result, it was entitled to the exemption allowed under section 1115(a)(15) of the Tax Law.

CONCLUSIONS OF LAW

A. That pursuant to section 112(2) of the State Finance Law, the contract between Lakeview Electric, Inc. and Facilities Development Corporation (an agency of the State of New York) became effective

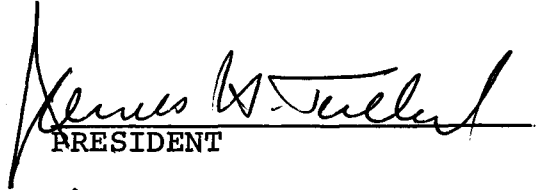
upon the approval and filing by the Comptroller on September 10, 1974. Accordingly, the contract was not entered into prior to September 1, 1974 and, thus, is exempt from tax by virtue of section 1115(a)(15) of the Tax Law. Applicant is, therefore, entitled to a refund of sales tax paid on tangible personal property purchased for use in the performance of said contract.

B. That the application of Lakeview Electric, Inc. is granted.

DATED: Albany, New York

September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER