

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ED J. MATTHEWS

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 ~~XXXXXX~~ Period (X) :
March 1, 1970 through February 28, 1973.

State of New York
County of Albany

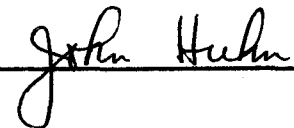
John Huhn , being duly sworn, deposes and says that
~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 1978, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Ed J. Matthews
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Ed J. Matthews
40 Brunswick Avenue
Troy, New York 12180
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
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ED J. MATTHEWS

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For a Redetermination of a Deficiency or :
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of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
March 1, 1970 through February 28, 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 25th day of August , 1978, ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Leonard J. Senzon

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leonard J. Senzon, Esq.
DiFabio and Couch
Professional Corporation
4 Automation Lane, Computer Park
Albany, New York 12205

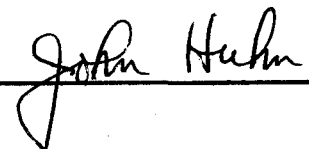
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

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

August 25, 1978

**Mr. Ed J. Matthews
40 Brunswick Avenue
Troy, New York 12180**

Dear Mr. Matthews:

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 Chryzasty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

ED J. MATTHEWS :

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 :
March 1, 1970 through February 28, 1973. :
:

Applicant, Ed J. Matthews, 40 Brunswick Avenue, Troy, New York 12180, 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 March 1, 1970 through February 28, 1973 (File No. 00250).

A small claims hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on December 22, 1977 at 9:00 A.M. Applicant appeared by DiFabio and Couch, PC (Leonard J. Senzon, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether applicant is liable for tax on the purchase of materials used in performing capital improvements to real property, where applicant collected tax on said materials from the customer.

FINDINGS OF FACT

1. Applicant, Ed J. Matthews, filed New York state and local sales and use tax returns for the period March 1, 1970 through February 28, 1973.

2. Applicant executed consents extending the period of limitations for assessment of sales and use taxes to July 22, 1974.

3. On July 19, 1974 as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$21,706.87, plus penalty and interest of \$7,459.29, for a total due of \$29,166.16 for the period March 1, 1970 through February 28, 1973.

4. Applicant timely filed an application for a hearing to review the aforesaid determination.

5. During the period under review, applicant was engaged in the business of selling, installing, maintaining and repairing automatic sprinkler systems. In performing capital improvement work, applicant separately billed and collected sales tax from the customer on the materials used on the job. Said taxes, which amounted to \$10,290.70 for the period March 1, 1970 through February 28, 1973, were reported on applicant's sales and use tax returns.

6. Applicant made all purchases tax-free with the use of his Direct Payment Permit. The Sales Tax Bureau's examiner determined that applicant was liable for additional use taxes on the purchase of materials used on capital improvement jobs and that the collection of tax from the customer was an erroneous collection of tax.

7. Applicant did not contest the accuracy of the audit, but contended that the assessment should be reduced by the \$10,290.70 which he erroneously collected from his customers. Applicant argued that at the time of the audit, he agreed to reimburse the State in the event a customer requested a refund on the erroneous collection. He also asserted that to collect this amount from him again constitutes double taxation.

8. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1101(b)(4)(i) of the Tax Law, as amended by Chapter 473, Laws 1969 (effective September 1, 1969), specifically provides (inter alia) that a contractor is liable for tax on the purchase of materials for use in performing capital improvements to real property.

B. That applicant erroneously collected sales taxes from his customers on the materials used in performing capital improvements and that such taxes are required to be remitted to the State in accordance with section 1137 of the Tax Law.

C. That the application of Ed J. Matthews is granted to the extent that the penalty and interest in excess of the minimum statutory rate are cancelled; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 19, 1974 and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER