

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Albany Crane Service, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 6/1/70 - 5/31/73. :

State of New York  
County of Albany

Jay Vredenburg, 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 15th day of June, 1979, he served the within Notice of Determination by mail upon Albany Crane Service, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Albany Crane Service, Inc.  
54-56 Dott Ave.  
Albany, NY 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
15th day of June, 1979.

*Marilyn J. Papineau*

*Jay Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
Albany Crane Service, Inc. :

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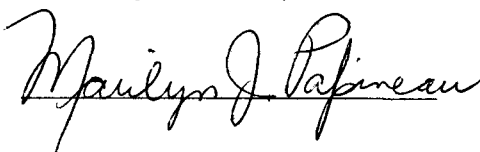
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of June, 1979, he served the within Notice of Determination by mail upon R. F. Van DenHouten the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

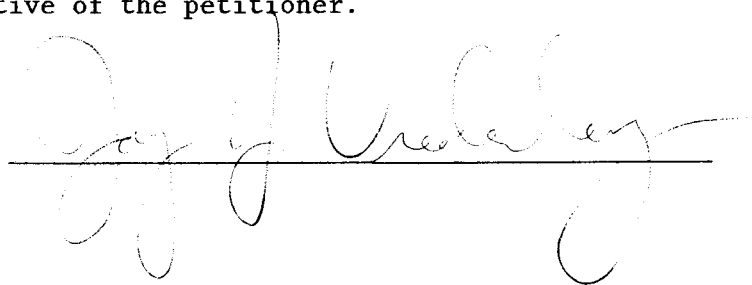
Mr. R. F. Van DenHouten  
c/o 54-56 Dott Ave.  
Albany, New York 12205

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  
15th day of June, 1979.

  
Marilyn J. Papineau

  
Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

June 15, 1979

Albany Crane Service, Inc.  
54-56 Dott Ave.  
Albany, NY 12205

Gentlemen:

Please take notice of the Determinaion of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1250 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,

A handwritten signature in cursive script, appearing to read 'Joseph Chapparo', written in dark ink.

cc: Petitioner's Representative  
R. F. Van DenHouten  
c/o 54-56 Dott Ave.  
Albany, New York 12205  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
ALBANY CRANE SERVICE, 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 June 1, 1970 through May 31,	:	
1973.	:	

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Applicant, Albany Crane Service, Inc., 54-56 Dott Avenue, Albany, New York 12205, 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 June 1, 1970 through May 31, 1973 (File No. 01418).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 17, 1979 at 10:45 A.M. Applicant appeared by R.F. Van DenHouten, Chairman of the Board, and by Al Smith, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether applicant's purchases of repairs and parts for vehicles used to escort its cranes were purchases for resale and, therefore, exempt from the imposition of sales tax.

FINDINGS OF FACT

1. On December 20, 1973, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against applicant for the period June 1, 1970 through November 30, 1970 in the amount of \$683.76, plus penalty and interest of \$284.90, for a total of \$968.66. The amount of said Notice represents sales and use taxes determined to be due from applicant for the first two sales tax quarters of the period under audit by the Sales Tax Bureau.

On January 18, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the remaining periods under audit of December 1, 1970 through May 31, 1973 in the amount of \$2,478.09, plus penalty and interest of \$655.48, for a total of \$3,133.57. Said assessment represents taxes determined to be due for the remainder of the audit period.

2. On May 31, 1974, the Sales Tax Bureau issued a Notice of Assessment Review (ST-574) to reflect certain adjustments agreed upon at an informal conference. The tax due on the notices which were issued on December 20, 1973 and January 18, 1974 was revised to \$316.44 and \$1,894.19, respectively.

3. The revised tax due of \$2,210.63 represents the sales or use tax which the Sales Tax Bureau asserts is due, with respect to the purchases at issue.

4. Applicant engaged in the rental of cranes and included a crane operator and oiler with all such rentals.

5. New York State Department of Transportation regulations required that applicant escort rental cranes which applicant transported on public highways. Applicant used pickup trucks as the escort or pilot vehicles. The pilot vehicle either preceded or followed the crane while it was moving on a highway, and also displayed warning signs for safety purposes.

The pickup trucks were also used to carry essential parts of the crane, which State regulations prohibited applicant from transporting on the crane itself.

Applicant's pickup trucks escorted or provided supportive services approximately 60% of their operating time.

6. Applicant included expenses for operating the pickup trucks when determining its hourly or daily rental charge for cranes; therefore, applicant considered purchases of parts and repairs for said trucks to be purchases which it made for resale.

7. Applicant does not list a separate charge for the rental of a pickup truck on customer invoices.

Although used to transport cranes to customer job sites, the pickup trucks remain under the control and jurisdiction of applicant.

CONCLUSIONS OF LAW

A. That applicant does not purchase repairs and parts for its escort vehicles for "resale," within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law; that the inclusion of the cost of said purchases in its rental charge for a crane does not constitute a "sale" thereof, within the meaning and intent of section 1101(b)(5) of the Tax Law; therefore, any purchase made by applicant with respect to the operation of its escort vehicles is a "purchase at retail" which is subject to the imposition of sales tax.

B. That the application of Albany Crane Service, Inc. is denied and the Notice of Assessment Review issued on May 31, 1974, which shows a revised tax due of \$2,210.63, is sustained.

DATED: Albany, New York  
June 15, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER