

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Atco Ceramics Corp. :  
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 11/30/73-11/30/74. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jean Schultz, 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 29th day of February, 1980, she served the within notice of Determination by mail upon Atco Ceramics Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Atco Ceramics Corp.  
Cass & Jackson Sts.  
Keyport, NJ

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  
29th day of February, 1980.

Joanne Knapp

Joan Schultz

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Atco Ceramics Corp. :  
for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 11/30/73-11/30/74. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jean Schultz, 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 29th day of February, 1980, she served the within notice of Determination by mail upon Alan Wasserman 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. Alan Wasserman  
P.O. Box 10  
Woodbridge, NJ 07095

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  
29th day of February, 1980.

Joanne Knapp

Jean Schultz

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

February 29, 1980

Atco Ceramics Corp.  
Cass & Jackson Sts.  
Keyport, NJ

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Alan Wasserman  
P.O. Box 10  
Woodbridge, NJ 07095  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ATCO CERAMICS CORP.	:	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 Ending November 30, 1973,	:	
February 28, 1974, August 31, 1974 and	:	
November 30, 1974.	:	

Applicant, Atco Ceramics Corp., Cass and Jackson Streets, Keyport, New Jersey, 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 November 30, 1973, February 28, 1974, August 31, 1974 and November 30, 1974 (File No. 15025).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 13, 1977 at 9:15 A.M. Applicant appeared by Wilentz, Goldman & Spitzer, Esqs. (Alan Wasserman, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether applicant, Atco Ceramics Corp., is a vendor required to collect New York sales and use taxes.

II. Whether applicant, Atco Ceramics Corp., is entitled to a refund of the New York sales and use taxes applicant remitted.

III. Whether the application for refund is barred by the Statute of Limitations.

FINDINGS OF FACT

1. Applicant, Atco Ceramics Corp., timely filed New York State and local sales and use tax returns for the quarterly periods ending November 30, 1973, February 28, 1974, August 31, 1974 and November 30, 1974.
2. Statements of audit changes and notices of deficiency were issued against applicant for the periods in question.
3. Applicant filed applications for redetermination or for refund of the sales and use taxes for the periods in question amounting to \$11,230.09 plus interest.
4. Applicant was a New Jersey corporation which did not own, lease or maintain an office in the State of New York during the periods in question.
5. Applicant did not own, lease or maintain a distributing house, warehouse or other type of entity within the State of New York during the aforesaid periods.
6. Applicant did not have a regular employee or agent performing solicitation in the State of New York, and did not own or maintain a bank account or stock of merchandise within the State during the aforesaid periods.
7. Applicant did not have a regular, systematic display of applicant's products by catalogues, samples or mailing flyers within the State of New York during the aforesaid periods.
8. Applicant did not advertise through any media in the State of New York and did not at any time use applicant's own vehicles to deliver goods to a New York customer if delivery was requested, during the aforesaid periods.
9. Sales made by applicant to residents or entities in the State of New York were either ordered by telephone or were placed in person in New Jersey. Deliveries of goods by applicant in the State of New York were made via common carrier.

10. Before the period in question, applicant had been incorporated within the State of New York but applicant's New York corporate status was dissolved in 1960.

11. Any place of business which applicant had earlier maintained in New York had been terminated prior to the periods in question.

12. Applicant did, during the periods in question, collect sales tax from applicant's New York customers.

#### CONCLUSIONS OF LAW

A. That the due process clause of the 14th Amendment prevents a state from holding a nonresident vendor liable for the collection of use taxes sold at the vendor's store outside the state, even though the vendor's advertising was known to reach the inhabitants of the taxing state and even though the vendor's circulars were mailed to customers in the taxing state and even though some of the vendor's purchases were delivered in the taxing state by common carrier and some of the vendor's own trucks. Due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax [Miller Brothers Co. v. Maryland, 347 US 340, Reh.den. 347 US 964 (1954)]. That, accordingly, applicant is not a vendor required to collect the New York State sales and use taxes.

B. That to allow applicant a refund of the New York taxes collected from its customers would constitute unjust enrichment, since such collections were made as a Trustee for the State of New York. That any amounts which were collected by applicant but were not remitted to the Sales Tax Bureau are still due and payable.

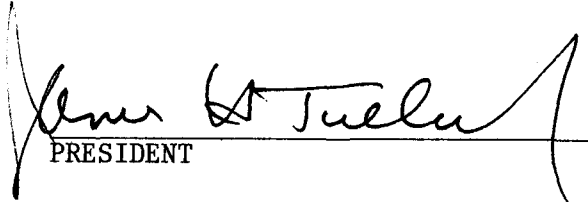
C. That in view of the foregoing, it is not necessary to determine as a conclusion of law whether or not the application for refund is barred by the Statute of Limitations.

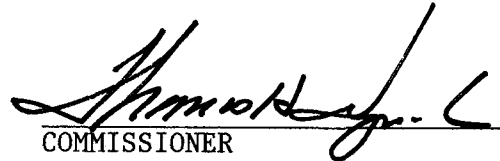
D. That the application of Atco Ceramics Corp. is granted to the extent indicated in Conclusion "A" above. Except as so granted, the application is in all other respects denied.

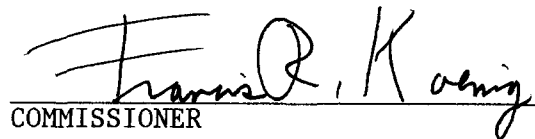
DATED: Albany, New York

STATE TAX COMMISSION

FEB 29 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER