

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Garbinsky Home Improvement Co., 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 3/1/71-5/31/74. :

State of New York
County of Albany

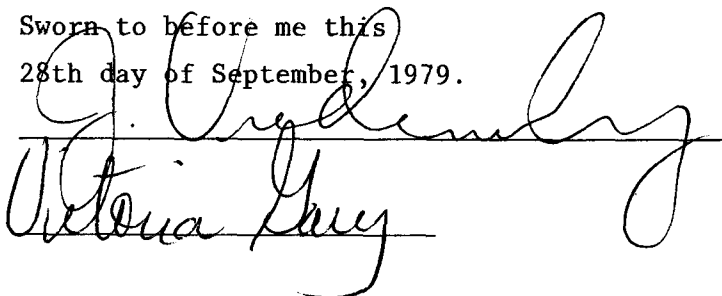
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Garbinsky Home Improvement Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Garbinsky Home Improvement Co., Inc.
7739 1st Ave. at Military
Niagara Falls, NY 14304

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
28th day of September, 1979.


Victoria Gray

STATE OF NEW YORK
STATE TAX COMMISSION

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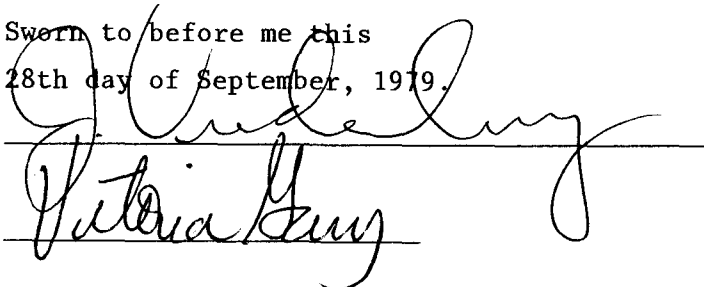
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Joseph Garbinsky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Joseph Garbinsky
7739 1st Ave. at Military
Niagara Falls, NY 14304

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
28th day of September, 1979.



Victoria Guy

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Garbinsky Home Improvement Co., Inc.
7739 1st Ave. at Military
Niagara Falls, NY 14304

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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Joseph Garbinsky
7739 1st Ave. at Military
Niagara Falls, NY 14304
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application
of
GARBINSKY HOME IMPROVEMENT CO., INC.
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, 1971 through May 31, 1974.:
:

DETERMINATION

Applicant, Garbinsky Home Improvement Co., Inc., 7739 1st Avenue at Military, Niagara Falls, New York 14304, 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, 1971 through May 31, 1974 (File No. 11104).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, One West Genesee Street, Buffalo, New York, on April 27, 1979 at 10:45 A.M. Applicant appeared by Joseph Garbinsky, president. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

- I. Whether applicant is liable for tax on the purchase of building materials used in performing capital improvements to real property.
- II. Whether applicant is liable for tax on the purchase of an automobile.

FINDINGS OF FACT

1. Applicant, Garbinsky Home Improvement Co., Inc., is a home improvement contractor which furnished and installed aluminum siding, awnings, storm windows and doors.

2. On February 5, 1975 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes

Due against applicant for the period March 1, 1971 through May 31, 1974 in the amount of \$6,309.29, plus penalty and interest of \$1,994.09, for a total of \$8,303.38.

3. Applicant timely filed a petition for redetermination of the above deficiency.

4. On audit, the Sales Tax Bureau's auditor reviewed applicant's purchase invoices for the entire period at issue. The auditor determined that applicant failed to pay a sales or use tax on the purchase of building materials totaling \$83,797.14, which were used in the performance of capital improvement work.

The auditor also found that applicant purchased an automobile for \$6,655.00 without paying tax by issuing a Resale Certificate to the vendor, Keyser Bros. Cadillac, Inc.

5. Applicant executed lump-sum contracts with its customers for the performance of capital improvement work.

6. Applicant issued its sales tax identification number to vendors when purchasing building materials.

7. Applicant contended that sales tax due on the purchase of the automobile was paid directly to New York State subsequent to the date of purchase, but it was unable to provide proof of payment thereof. Subsequent to the hearing, applicant submitted a check in the amount of \$399.48 in payment of the tax.

CONCLUSIONS OF LAW

A. That section 1101(b)(4)(i) of the Tax Law, as amended by Chapter 473, Laws 1969, provides, in part, that a contractor is liable for tax on materials purchased for use or consumption in capital improvements to real property. Accordingly, applicant is liable for tax on the purchase of building materials.

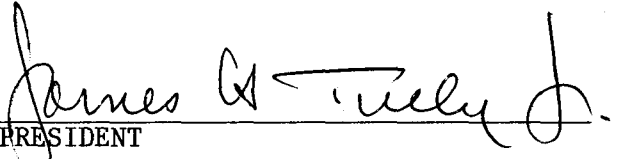
B. That the balance of tax due on the purchase of the automobile is \$66.37.

C. That the Sales Tax Bureau shall apply applicant's payment of \$399.48 towards the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on February 5, 1975; however, the application of Garbinsky Home Improvement Co., Inc. is otherwise denied.

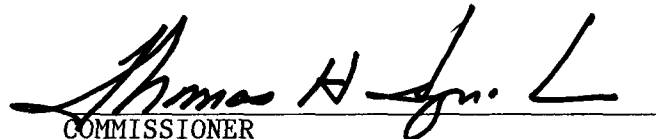
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER