

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
G & G Rubbish Removal :
George Guynup : 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 Years 1965 - 1974. :

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 9th day of October, 1979, he served the within notice of Determination by mail upon Richard M. Meyers 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. Richard M. Meyers
111 Washington Ave.
Albany, NY 12210

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
9th day of October, 1979.

Marcy Donnini

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
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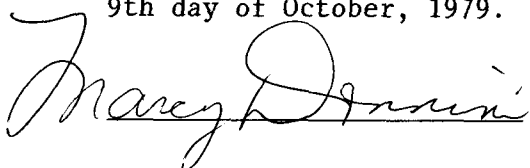
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon G & G Rubbish Removal, George Guynup, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

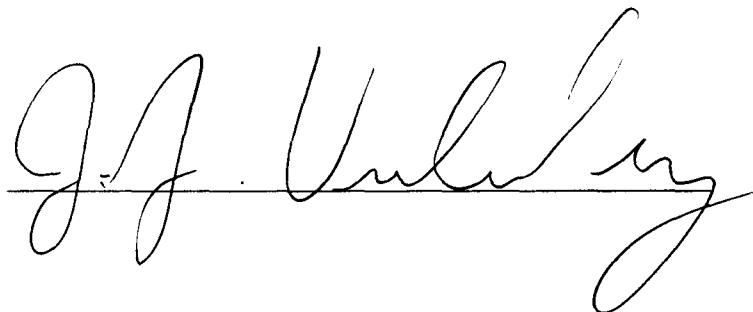
G & G Rubbish Removal
George Guynup
11 N. Lake Ave.
Albany, NY

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
9th day of October, 1979.


Mary D. Dinnin


J. J. Vredenburg

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

October 9, 1979

G & G Rubbish Removal
George Guynup
11 N. Lake Ave.
Albany, NY

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

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard M. Meyers
111 Washington Ave.
Albany, NY 12210
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| GEORGE GUYNUP D/B/A | : | DETERMINATION |
| G & G RUBBISH REMOVAL | : | |
| 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 August 1, 1965 through | : | |
| August 31, 1974. | : | |

Applicant, George Guynup d/b/a G & G Rubbish Removal, 11 North Lake Avenue, Albany, New York, 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 August 1, 1965 through August 31, 1974 (File No. 11125).

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 1:15 P.M. Applicant appeared by Thomas D. Latin, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether applicant is liable for sales tax for the period August 1, 1965 through August 31, 1974, during which period he failed to collect said tax from his customers.

FINDINGS OF FACT

1. On January 3, 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 August 1, 1965 through August 31, 1974, in the amount of \$11,442.12, plus penalty and interest of \$4,889.68, for a total of \$16,331.80.

2. During the period at issue, applicant was engaged in the service of rubbish removal. Applicant did not file a certificate of registration with the Sales Tax Bureau until November 7, 1974, nor did he collect any sales taxes until such date.

3. On audit, the Sales Tax Bureau obtained applicant's gross sales from Federal income tax returns filed for the years 1965 through 1973, and from the sales journal for 1974. The gross sales which were so determined were reduced by sales to exempt organizations, and also by sales to customers who had been audited by the Sales Tax Bureau.

Applicant was held liable for uncollected sales tax of \$11,442.12.

4. Applicant contended that he had attempted to file a certificate of registration with the Sales Tax Bureau sometime in 1968; however, he never received the necessary forms.

5. After the audit, applicant rebilled his customers for the sales tax which he had failed to collect. As a result of said billings, applicant has collected approximately \$1,900.00 in sales tax.

CONCLUSIONS OF LAW

A. That applicant is a "person required to collect tax" within the meaning and intent of section 1131(1) of the Tax Law; therefore, he is personally liable for the tax imposed, collected or required to be collected, in accordance with the provisions of section 1133(a) of the Tax Law.

B. That the application of George Guynup d/b/a G & G Rubbish Removal is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 3, 1975 is sustained.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER