

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HILLSIDE TANK AND BODY CORP.

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 ~~Year(s)~~ Period(s) :  
December 1, 1969 through August 31, 1974

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 15th day of March , 19 79, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Hillside Tank  
& Body Corp. ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Hillside Tank & Body Corp.  
72-45 51st Avenue  
Woodside, NY 11377

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~~ 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 March , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HILLSIDE TANK AND BODY CORP.

AFFIDAVIT OF MAILING

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) :  
December 1, 1969 through August 31, 1974

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 15th day of March , 1979 , she served the within  
Notice of Determination by (~~certified~~) mail upon Rocco Totino  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Rocco Totino  
C/O Pustorino, Puglisi & Co., P.C.  
515 Madison Avenue  
New York, NY 11370  
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 March , 1979

Marilyn J. Lafreniere

John Huhn



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

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

March 15, 1979

Hillside Tank and Body Corp.  
72-45 51st Avenue  
Woodside, NY 11377

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,

  
**Joseph Chyrywat**  
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
HILLSIDE TANK AND BODY 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 Period December 1, 1969 through :  
August 31, 1974. :  
:

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Applicant, Hillside Tank and Body Corp., 72-45 51st Avenue, Woodside, New York 11377, 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 December 1, 1969 through August 31, 1974 (File No. 11589).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1978 at 1:15 P.M. Applicant appeared by Rocco Totino, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Robert Felix, Esq., of counsel).

ISSUE

Whether the findings of an audit conducted by the Sales Tax Bureau were proper and correct.

FINDINGS OF FACT

1. Applicant, Hillside Tank and Body Corp., filed New York state and local sales and use tax returns for the period December 1, 1969 through August 31, 1974.
2. On June 10, 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 taxes due of \$9,049.13, plus penalty and interest of \$4,389.56, for a total of \$13,438.69.

3. Applicant is engaged in the sale and service of trucks and truck bodies used for sanitation service.

4. On audit, a reconciliation of gross sales per books to gross sales per sales tax returns disclosed an understatement of \$90,060.45 on applicant's sales tax returns. Also, a comparison of the sales tax accrual account totals and the sales tax reported for each quarter under audit disclosed unremitted sales tax of \$3,216.14. The Sales Tax Bureau accounted for some discrepancies in the accrual account and made the appropriate adjustments.

5. Applicant argued that the workpapers prepared by the Sales Tax Bureau show gross sales to be overstated in some quarters and that these overstatements should have been deducted from the understatements before computing the tax due.

6. Applicant also argued that the auditor's workpapers showed erroneous overpayments of tax in certain quarters and that these overpayments should be credited against the unremitted tax assessed.

7. Applicant did not produce documentary or any other substantial evidence to show what the overstatements or overpayments represented, or to show that the audit findings were incorrect.

#### CONCLUSIONS OF LAW

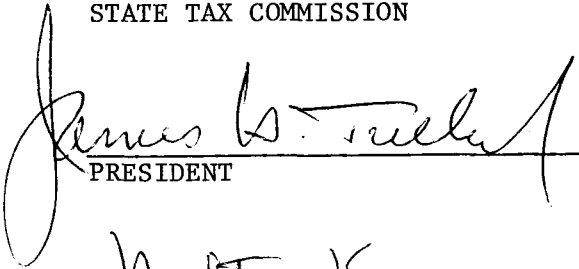
A. That the amount of tax due was determined by the Sales Tax Bureau from such information as was available, as provided for in section 1138(a) of the Tax Law, and that the results thereof were correct.


B. That the application of Hillside Tank and Body Corp. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 10, 1975 is sustained.

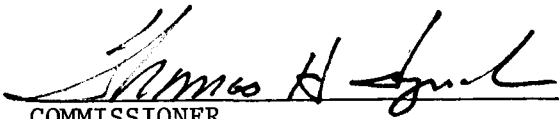
DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER