

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Elmer & Leonard Reback :
d/b/a Reback Bros, : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 of the Tax Law :
for the Period 3/1/73 - 2/29/76. :

State of New York
County of Albany

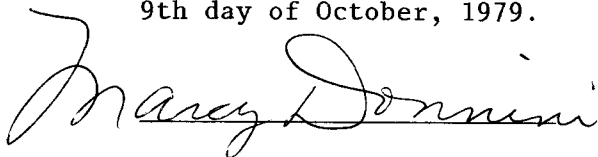
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon William McGowan the representative of the petitioner in the within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

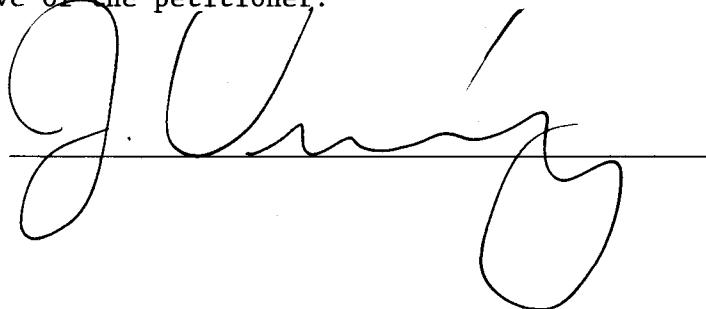
Mr. William McGowan
291 Ranck Trail W.
Amherst, NY

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 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.


Nancy Donneni


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Elmer & Leonard Reback :
d/b/a Reback Bros, : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 of the Tax Law :
for the Period 3/1/73 - 2/29/76. :

State of New York
County of Albany

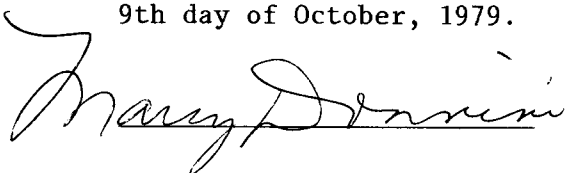
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Elmer & Leonard Reback, d/b/a Reback Bros., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

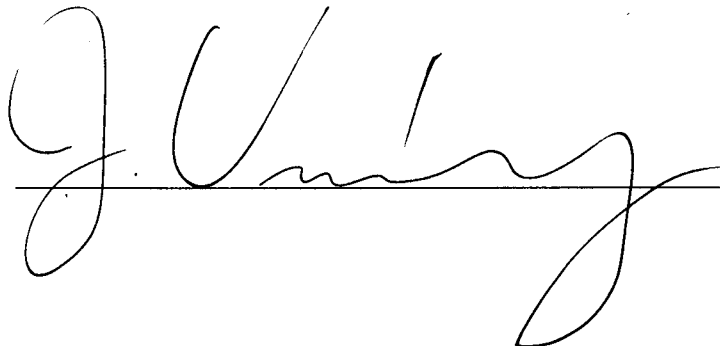
Elmer & Leonard Reback
d/b/a Reback Bros,
LaSalle Sta., P.O. Box 201
Niagara Falls, NY 14304

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
9th day of October, 1979.


Mary Donner


Jay Vredenburg

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

October 9, 1979

Elmer & Leonard Reback
d/b/a Reback Bros,
LaSalle Sta., P.O. Box 201
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:

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
William McGowan
291 Ranck Trail W.
Amherst, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ELMER REBACK and LEONARD REBACK, Copartners	:	DETERMINATION
D/B/A REBACK BROS.	:	
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, 1973 through	:	
February 29, 1976.	:	

Applicants, Elmer Reback and Leonard Reback, Copartners, d/b/a Reback Bros., Lasalle Station, P.O. Box 201, 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, 1973 through February 29, 1976 (File No. 16760).

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 24, 1979 at 10:45 A.M. Applicants appeared by William McGowan, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Kathy Sanderson, Esq., of counsel).

ISSUE

Whether applicants are liable for sales or use tax on the purchase of hydraulic oil used in the operation of an automatic baler.

FINDINGS OF FACT

1. On September 22, 1976 as a result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Elmer Reback and Leonard Reback, Copartners, d/b/a Reback Bros., for the period March 1, 1973 through February 29, 1976 in the amount of \$113.52, plus penalty and interest of \$47.30, for a total of \$160.82.

2. On audit, the Sales Tax Bureau determined that hydraulic oil purchased by Reback Bros. was a supply used in connection with production machinery and was, therefore, subject to New York State sales and use tax. Purchases of hydraulic oil totaled \$2,838.00 for the audit period.

3. During the period at issue, applicants were engaged in the processing of scrap metal. Part of the process involved placing scrap metal in the baler which compressed the metal for recycling purposes.

The baler operates through hydraulic pressure which is created when a quantity of hydraulic oil is forced through a small opening. Said baler has a hydraulic oil capacity of 1,500 gallons. This hydraulic oil must be replaced periodically because of leakage.

4. Applicants contended that the hydraulic oil is a component part of the baler and is necessary for its operation. Applicants further contended that the sole purpose of the oil is to create hydraulic pressure and that it is not for lubrication.

5. Reasonable cause existed for applicants failure to pay sales or use tax on the purchase of hydraulic oil.

CONCLUSIONS OF LAW

A. That section 1115(a)(12) of the Tax Law provides, in part, for an exemption from sales and use tax on machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment.

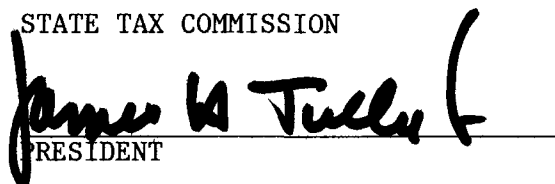
B. That the hydraulic oil purchased by applicants for use in connection with the operation of the baler is a "supply," within the meaning and intent of section 1115(a)(12) of the Tax Law; therefore, said oil is subject to the imposition of New York State sales and use tax.

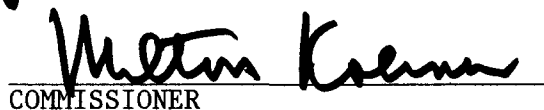
C. That the application of Elmer Reback and Leonard Reback, Copartners, d/b/a Reback Bros., is granted to the extent that the penalty imposed pursuant to section 1145(a) of the Tax Law and the interest in excess of the minimum statutory rate are cancelled; that the Sales Tax Bureau is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on September 22, 1976; and that, except as so granted, the application is in all other respects denied.

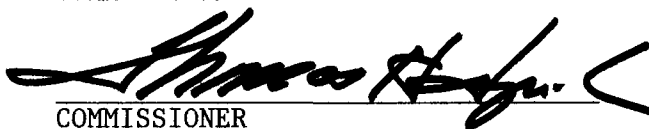
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


RESIDENT


COMMISSIONER


COMMISSIONER