

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SAF-TEE PLUMBING 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 and 29 of the :  
Tax Law for the ~~Year(s)~~ ~~Period(s)~~ :  
September 1, 1971 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 14th day of February , 1979 , he served the within  
Notice of Determination by ~~(certified)~~ mail upon Saf-Tee Plumbing Corp.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Saf-Tee Plumbing Corp.  
429 Keap Street  
Brooklyn, New York 11211

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)~~  
~~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

14th day of February , 1979

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

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Tax Law for the ~~XXXXXX~~ Period ~~(XX)~~ :  
September 1, 1971 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 14th day of February , 1979, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Elliot Gross, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Elliot Gross, Esq.  
371 Merrick Road  
Rockville Centre, NY 11570

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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

Saf-Tee Plumbing Corp.  
429 Kean Street  
Brooklyn, New York 11211

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 TAX COMMISSION

1. Applicant, Saf-Tee Plumbing Corp., filed New York state and local sales and use tax returns for the period September 1, 1971 through August 31, 1974.

2. On March 21, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period September 1, 1971 through August 31, 1974. Said Notice assessed a tax due of \$15,950.40, plus penalty and interest of \$5,413.36, for a total due of \$21,363.76. The assessment was made as the result of a field audit. In the course of its audit, the Sales Tax Bureau examined applicant's plumbing work transactions for the test period December 1, 1973 through February 28, 1974. In its review, the taxing bureau determined that certain transactions, which applicant treated as capital improvements, were repairs and were, therefore, taxable within the meaning of section 1105(c)(5) of the Tax Law. This examination resulted in the disallowance of non-taxable sales by 13.79%.

3. Applicant, Saf-Tee Plumbing Corp., filed an Application for Hearing to Review Determination on June 10, 1975.

4. Applicant, Saf-Tee Plumbing Corp., is a plumbing contractor performing capital improvement and repair work for landlords and real estate agencies.

5. Applicant and its customers jointly made determinations as to whether particular plumbing jobs should be characterized for sales tax purposes as repairs or capital improvements. Applicant required its customers to support their position that the work to be performed was a capital improvement, by furnishing a Certificate of Capital Improvement.

6. Applicant contended that the disallowed non-taxable sales were capital improvements or, where such work appeared on its face to be a repair, that it was incidental to a general plan of rehabilitation and up-grading of its customers' real property, which rehabilitation prolonged the useful life of the property and

which became permanently affixed to real property. Applicant's position was that such work constituted capital improvements to property exempt from taxation in accordance with the treatment provided such transactions for Federal tax purposes, and that the Sales Tax Bureau failed to give credence to such treatment in making its determination that the work constituted repairs.

7. Applicant further contended that the receipts from the sale (as part of these plumbing jobs) of tangible personal property to its customers were exempt from taxation under section 1115(a)(17) of the Tax Law, because such tangible personal property became an integral component part of the real property.

8. Applicant received Certificates of Capital Improvement (ST-124) in good faith from its customers for the plumbing work disallowed as non-taxable capital improvement jobs. Applicant maintained that its receipt of such certificates in good faith relieved it of the obligation to collect sales tax from its customers under section 1132(c) of the Tax Law.

#### CONCLUSIONS OF LAW

A. That the nature of the work performed by applicant constituted maintaining, securing or repairing real property, within the meaning and intent of section 1105(c)(5) of the Tax Law; therefore, such plumbing work constituted a taxable sale.

B. That applicant failed to sustain the burden of proof necessary to show that such plumbing work so performed was part of an overall rehabilitation of its customers' real property.

C. That the language set forth in section 1132(c) states that:

"...the burden of proving that any receipt...is not taxable shall be upon the person required to collect tax or the customer. Unless (1) a vendor shall have taken from the purchaser a certificate in such form as the tax commission

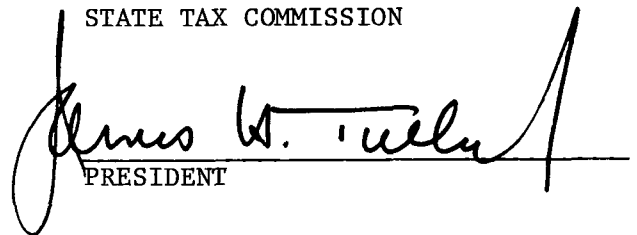
may prescribe...together with such other information as said commission may require to the effect that the property or service was purchased for resale or for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen...."

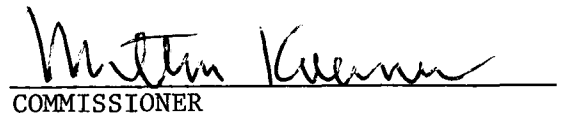
Section 1115(a)(17) of the Tax Law exempts receipts from the sale of "Tangible personal property sold by a contractor, subcontractor, or repairman to a person... for whom he is adding to, or improving real property, property or land by a capital improvement...." In accordance with the language of the above two sections, the exemption applies only when a capital improvement is performed. Therefore, a Certificate of Capital Improvement is not an exemption certificate within the meaning and intent of section 1132(c). Applicant's acceptance in good faith of said certificates from its customers does not relieve it of the obligation to collect sales tax from said customers when a transaction is taxable.

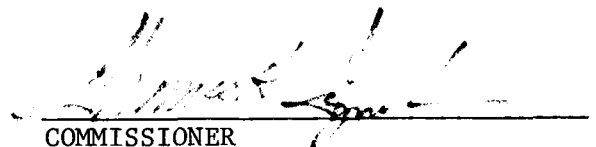
D. That the application of Saf-Tee Plumbing Corp. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 21, 1975 is sustained.

DATED: Albany, New York  
February 14, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER