

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SNYDER PLUMBING & HEATING 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 ~~XXXXXX~~ or Period(s) :
April 1, 1969 through May 31, 1973

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 25th day of April, 1979, ~~she~~ served the within

Notice of Determination by ~~XXXXXX~~ mail upon Snyder Plumbing &
Heating Corp. ~~(XXXXXXXXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Snyder Plumbing & Heating Corp.
1075 Central Park Avenue
Scarsdale, NY 10583

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 ~~XXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

25th day of April, 1979

Nancy L. Jones

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SNYDER PLUMBING & HEATING 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 ~~XXXXXX~~ or Period(s) :
April 1, 1969 through May 31, 1973

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 25th day of **April**, 1979, ~~She~~ served the within
Notice of Determination by ~~XXXXXX~~ mail upon **E. Walter Snyder,**
President (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:
E. Walter Snyder, President
Snyder Plumbing & Heating Corp.
1075 Central Park Avenue
Scarsdale, NY 10583

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

25th day of **April**, 1979

Marcy D. Spinn

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

April 25, 1979

Snyder Plumbing & Heating Corp.
1075 Central Park Avenue
Scarsdale, NY 10583

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) **1139 & 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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SNYDER PLUMBING & HEATING 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	:	
Period April 1, 1969 through May 31, 1973.	:	

Applicant, Snyder Plumbing & Heating Corp., 1075 Central Park Avenue, Scarsdale, New York 10583, 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 April 1, 1969 through May 31, 1973 (File No. 11162).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 2, 1978, at 9:15 A.M. Applicant appeared by E. Walter Snyder, President. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether applicant filed an Application for Credit or Refund within the time limits prescribed by section 1139(a) of the Tax Law.

II. Whether the plumbing work performed by applicant pursuant to certain contracts constituted a repair or a capital improvement to real property.

FINDINGS OF FACT

1. On August 16, 1972, applicant filed an Application for Credit or Refund of State and Local Sales or Use Tax (ST-139) in the amount of \$2,062.77 for the period April 1, 1969 through May 31, 1972. Said application was based on increased sales taxes paid on purchases used solely in the performance of

pre-existing construction contracts and also on sales taxes paid on materials used in repair work for an exempt organization.

2. As a result of the refund claim, the Sales Tax Bureau performed an audit of applicant's books and records for the period June 1, 1969 through May 31, 1974. An examination of the supporting documents attached to the refund application disclosed mathematical errors that increased the amount of the refund to \$3,014.90. On audit, the Sales Tax Bureau disallowed sales taxes claimed for the months of April and May, 1969, contending that the three-year statute of limitations had expired. The Sales Tax Bureau also disallowed sales tax credits claimed with respect to certain construction contracts that the applicant alleged was for repair work. The Sales Tax Bureau took the position that the work performed was in the nature of a capital improvement to real property and as such, the applicant was liable for the sales taxes paid. The refunds disallowed by the Sales Tax Bureau totaled \$2,161.38.

A detailed review of purchase invoices disclosed that applicant failed to pay a tax on purchases totaling \$3,967.91 and it was held liable for the tax due thereon of \$134.63.

3. On January 14, 1974, the Sales Tax Bureau issued the applicant a Credit Voucher for State and Local Sales and Use Tax (ST-135) in the amount of \$698.63, plus interest of \$102.12 for a total of \$800.75.

4. Applicant made a timely application for a revision of the partial denial of its refund claim.

5. During the period at issue, applicant performed plumbing work at the Kings Park State Hospital; Willson's Woods Pool, Mt. Vernon, New York; Green Haven Prison; and Suffolk Psychiatric Hospital. The work performed at each of said locations was as follows:

<u>Project</u>	<u>Description of Work</u>
Kings Park State Hospital	<p>Furnish and install for the building, the following systems of piping complete with plumbing fixtures, equipment, connections, trimmings, insulation, painting, etc., all as shown and/or as specified.</p> <p>(a) Drainage piping including soil, waste and vent piping</p> <p>(b) Water Supply System</p> <p>(c) Sprinkler System</p>
Willson's Woods Pool	<p>Remove and replace existing cast iron supply and return piping with (a) cast iron pipe, in areas and of sizes shown and (b) with rigid PVC pipe, also in areas and of sizes shown, and cut and replace concrete deck and filter room floor as required, for the first phase of the work at Willson's Woods Pool, Mt. Vernon, New York.</p>
Green Haven Prison	<p>Furnish and install for the building, the following systems of piping complete with plumbing fixtures, equipment, connections, trimmings, insulation, painting, etc. all as shown and/or as specified.</p> <p>(a) Drainage piping including waste and vent piping</p> <p>(b) Water Supply System</p>
Suffolk Psychiatric Hospital	<p>(a) Delete "and conductor piping". Add: Alterations to existing waste, soil and vent systems and removal of all piping no longer required.</p> <p>(b) Remove entire existing cold, hot and recirculating main piping systems in basement from point of entry in building to each existing cold, hot and recirculating piping riser and branch and replace with new Type "L" copper piping systems and reconnect each riser and branch into new mains.</p>

6. The applicant contended that the plumbing work as described in Finding of Fact No. 5 constituted repairs to real property and should not have been disallowed by the Sales Tax Bureau.

CONCLUSIONS OF LAW

A. That the plumbing work performed by applicant as described in Finding of Fact No. 5 constituted a capital improvement to real property.

B. That under section 1139(a) of the Tax Law, a claim for credit or refund must be filed within three years of the date when the tax was payable.

Applicant's refund claim was filed on August 16, 1972. Accordingly, the claim was not timely insofar as it applies to taxes for the months of April and May, 1969.

C. That in accordance with Conclusion of Law "A", applicant was liable for the sales tax paid on the purchase of the tangible personal property consumed in the performance of a capital improvement and therefore, is not entitled to a credit or refund for said taxes.

D. That the application of Snyder Plumbing & Heating Corp. is denied and the partial refund denial by the Sales Tax Bureau is sustained.

DATED: Albany, New York

April 25, 1979

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER