

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Sovereign Construction Co. Ltd. :  
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 8/31/72 - 8/31/73. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

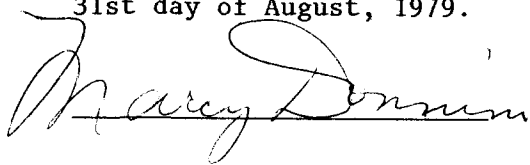
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Determination by mail upon Sovereign Construction Co. Ltd., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

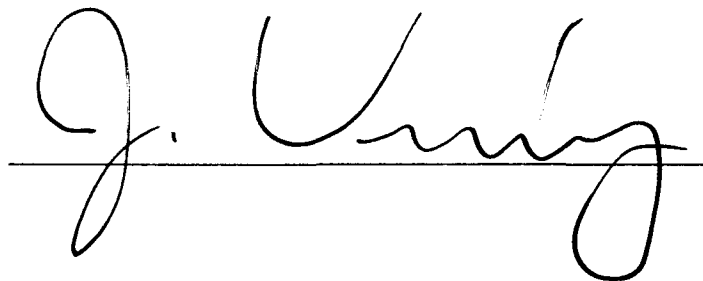
Sovereign Construction Co. Ltd.  
East 81 State Hgwy. Four  
Paramus, NJ 07652

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  
31st day of August, 1979.

  
Mary Dorman

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Sovereign Construction Co. Ltd. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

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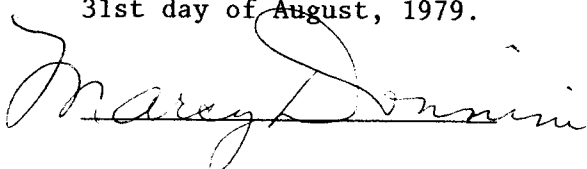
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Determination by mail upon Max Greenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

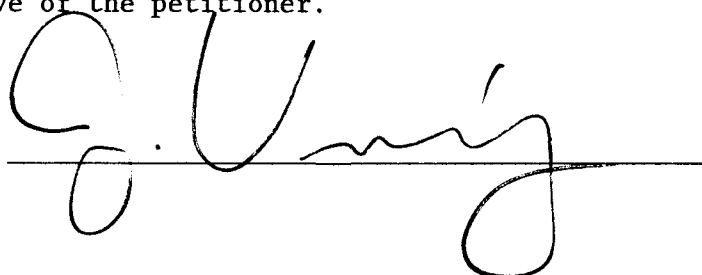
Mr. Max Greenberg  
Koch, Putterman & Greenberg  
132 W. 31st St.  
New York, NY 10001

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  
31st day of August, 1979.

  
Mary Donnan

  
Jay Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Sovereign Construction Co. Ltd.  
East 81 State Hgwy. Four  
Paramus, NJ 07652

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,

cc: Petitioner's Representative  
Max Greenberg  
Koch, Putterman & Greenberg  
132 W. 31st St.  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
SOVEREIGN CONSTRUCTION COMPANY, LTD.	:	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 June 1, 1972	:	
through August 31, 1973.	:	

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Applicant, Sovereign Construction Company, Ltd., East 81, State Highway Four, Paramus, New Jersey 07652, 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 June 1, 1972 through August 31, 1973 (File No. 10282).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1978. Applicant appeared by Max Greenberg, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether the contract between applicant and the U.S. Army Engineer District, New York, constituted a pre-existing lump sum contract, within the meaning and intent of section 1119(a)(3) of the Tax Law.

FINDINGS OF FACT

1. On December 18, 1970, applicant, Sovereign Construction Company, Ltd., entered into a construction contract with the U.S. Army Engineer District, New York, for the construction of a Cadet Activities Center at the United States Military Academy, West Point, New York. The contract price was set forth in the contract as "Twenty-Two Million, Three Hundred Forty Thousand, and Seven 00/100 Dollars (\$22,340,007.00) Target Price."

2. On its sales tax returns which it filed for the period June 1, 1972 through August 31, 1973, applicant indicated a credit or refund due for the increase in sales taxes which it paid on materials used in performing the above contract. The applicant claimed that said contract qualified as a pre-existing lump sum contract pursuant to section 1119(a)(3) of the Tax Law.

3. On December 13, 1973, the Sales Tax Bureau advised applicant that its claim for refund had been partially denied in the amount of \$369.44, and that upon agreeing with the denial, a refund of \$5,574.72 would be recommended for approval and sent to the Department of Audit and Control for final approval, in accordance with the State Constitution.

4. On April 24, 1974, the Sales Tax Bureau informed applicant that upon further review, its claim for refund was being denied in full.

5. Applicant contended that the contract at issue is an incentive-type contract in which the profits or losses are shared between the Government and the Contractor, and that "target price" refers to the original contract price. It also contended that any cost over and above the target price or any additional profits experienced are to be shared with the Government.

CONCLUSIONS OF LAW

A. That the contract at issue is a "fixed price type" contract within the meaning of the Armed Services Procurement Regulations, which provide that

...the fixed-price incentive contract is a fixed-price type of contract with provision for adjustment of profit and establishment of the final contract price by a formula based on the relationship which final negotiated total cost bears to total target costs. (41 CFR section 1-3.404-4(a)(1).)

B. That section 1119(a) of the Tax Law provides that the term "pre-existing lump sum or unit price construction contract" shall mean a contract for the construction of improvements to real property under which the amount payable to the contractor or subcontractor is fixed, without regard to the costs incurred by him in the performance thereof.

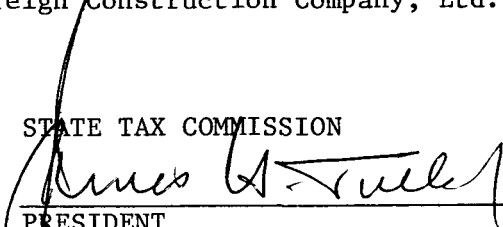
C. That the final contract price is established by a formula based on the relationship which the final negotiated total cost bears to total target costs (Conclusion of Law "A"). Therefore, the contract is not a pre-existing lump sum or unit price construction contract, within the meaning and intent of section 1119(a) of the Tax Law.

D. That the application of Sovereign Construction Company, Ltd. is denied.

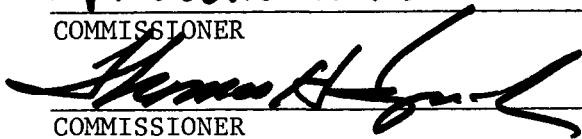
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER