

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Walton Door Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 9/1/72-2/29/76. :

State of New York
County of Albany

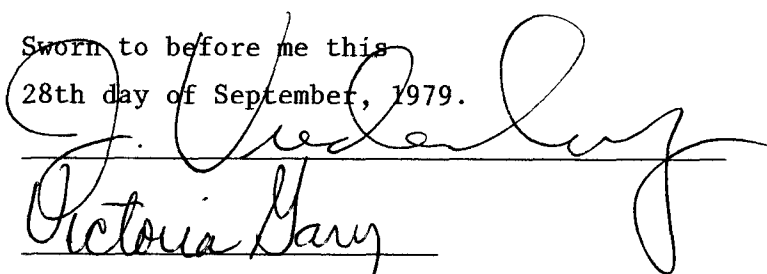
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Walton Door Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walton Door Co.
3 Linda Ct.
Glen Cove, NY 11542

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
28th day of September, 1979.


Victoria Gary

STATE OF NEW YORK
STATE TAX COMMISSION

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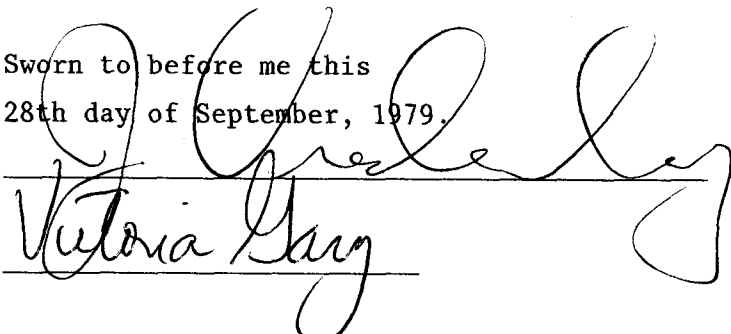
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Malcolm Starky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Malcolm Starky
400 Jericho Tpke.
Jericho, NY 11753

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
28th day of September, 1979.


Victoria Garg

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Walton Door Co.
3 Linda Ct.
Glen Cove, NY 11542

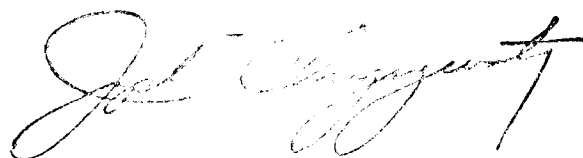
Gentlemen:

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
Malcolm Starky
400 Jericho Tpke.
Jericho, NY 11753
Taxing Bureau's Representative

STATE TAX COMMISSION

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 2:45 P.M. Applicant appeared by Malcolm Starky, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether applicant's furnishing and installing exterior entrance doors constituted a capital improvement to real property, or a retail sale of tangible personal property.

II. Whether the penalty imposed pursuant to section 1145(a) of the Tax Law, as well as interest in excess of the minimum statutory rate, should be waived.

FINDINGS OF FACT

1. On October 25, 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 applicant for the period September 1, 1972 through February 29, 1976, in the amount of \$3,347.62, plus penalty and interest of \$1,460.21, for a total of \$4,807.83.

2. Applicant is engaged in the sale and installation of hollow and solid-core entrance doors. Applicant primarily installs doors for general contractors and for home improvement dealers. The installation charge (which is approximately \$35.00) includes cutting and fitting the door and installing the hinges and locks. Applicant also stocks doors in various sizes which are available without installation.

3. On audit, the Sales Tax Bureau took the position that the installation of such doors constituted a capital improvement to real property. It determined that applicant failed to pay a sales or use tax on the purchase of tangible personal property used in the performance of such capital improvement work, in the amount of \$45,464.12; therefore, applicant was held liable for the tax due thereon of \$3,347.62. The Sales Tax Bureau did not assert any additional taxes with respect to those sales on which applicant collected and remitted the tax.

4. Applicant contended that he is a distributor of doors and that the installation thereof is incidental to the retail sale of the door. Consequently, he reasoned that the doors which he sold were tangible personal property rather than capital improvements

to real property. Applicant collected sales tax on the total sale price, including the installation charge, unless an exemption certificate was issued by the customer.

5. Applicant had resale certificates on file for sales of installed doors, on which tax was not collected. The certificates examined by the Sales Tax Bureau were issued by contractors for the sale of installed doors. Applicant maintained that the resale certificates which indicated a purchase of tangible personal property were accepted in good faith. Applicant further alleged that tax would be collected twice on the same sale because his customers have paid use tax on the sales tax returns which they filed.

6. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That applicant's furnishing and installing exterior entrance doors constituted a capital improvement to real property; therefore, applicant is liable for tax on tangible personal property which is used or consumed in the performance of such capital improvement work, in accordance with the provisions of sections 1105(a) and 1110 of the Tax Law.

B. That the interest in excess of the minimum statutory rate and the penalty imposed under section 1145(a) of the Tax Law are cancelled.

C. That the application of John Walton d/b/a Walton Door Co. is granted to the extent indicated in Conclusion of Law 'B'; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 25, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE

TAX APPEALS BUREAU

TO Mr. Coburn

No better address. Please file.

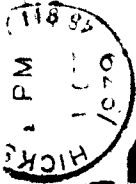
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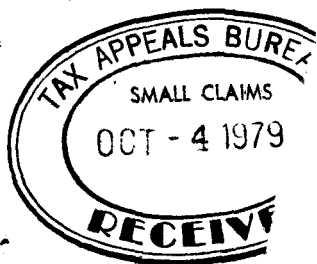
STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



ALWAYS USE
ZIP CODE



Malcolm Starky
400 Jericho Tpke.
Jericho, NY 11753



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

JOHN J. SOLLECITO
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Telephone: (518) 457-1723

September 28, 1979

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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,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Malcolm Starky
400 Jericho Tpke.
Jericho, NY 11753
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
JOHN WALTON D/B/A : DETERMINATION
WALTON DOOR CO. :
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 September 1, 1972 through :
February 29, 1976.

Applicant, John Walton d/b/a Walton Door Co., 3 Linda Court, Glen Cove, New York 11542, 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 September 1, 1972 through February 29, 1976 (File No. 17196).

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 2:45 P.M. Applicant appeared by Malcolm Starky, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

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DATED: Albany, New York

SEP 28 1979

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PRESIDENT


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