

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

C. D. Lane :

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 March 17, 1978. :

State of New York

County of Albany

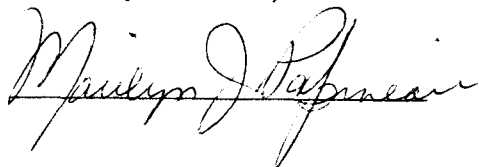
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of June, 1979, he served the within Notice of Determination by mail upon C. D. Lane, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

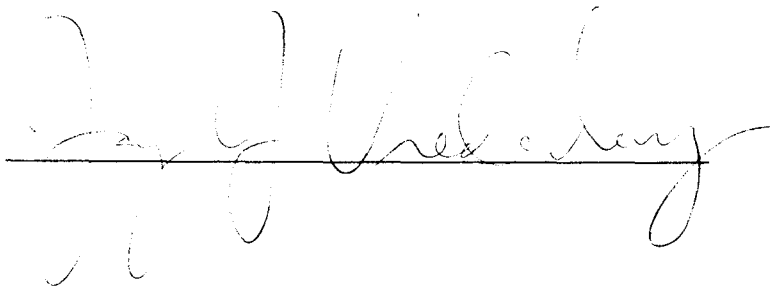
C. D. Lane  
Windham Arms  
Windham, NY 12496

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  
22nd day of June, 1979.







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

June 22, 1979

C. D. Lane  
Windham Arms  
Windham, NY 12496

Dear Mr. Lane:

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 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,

*Michael Alexander*

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
C. D. LANE : 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 March 17, 1978. :  
:

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Applicant, C.D. Lane, Windham Arms, Windham, New York 12496, 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 17, 1978 (File No. 22428).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 15, 1979 at 1:00 P.M. Applicant appeared by Oreste Vincent, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether applicant's purchase of fuel oil was exempt from sales tax by virtue of section 1115(a)(3) of the Tax Law.

FINDINGS OF FACT

1. On March 17, 1978, applicant purchased 653.9 gallons of fuel oil for his residence, on which he paid \$22.20 in New York state and local sales tax.

2. The Sales Tax Bureau received an Application for Credit or Refund of State and Local Sales or Use Tax dated April 25, 1978 from applicant, C.D. Lane, for a refund of \$22.20, which represents the sales tax paid on 653.9 gallons of fuel oil for residential heating.

3. By a letter dated May 8, 1978, Robert P. Daly, Director of the Audit Division, denied applicant's refund claim.

4. On July 6, 1978, the Department of Taxation and Finance received a formal application for a hearing pursuant to section 1139(b) of the Tax Law from applicant, as a result of the Director's denial of said refund claim.

5. Fuel oil is neither a drug nor a medicine, nor is it ingested by humans.

CONCLUSIONS OF LAW

A. That section 1115(a)(3) of the Tax Law exempts the following:

(3) Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

B. That fuel oil used for residential heating purposes is subject to New York state and local sales tax and is not exempt from such taxation, within the meaning and intent of section 1115(a)(3) of the Tax Law.

C. That the application of C.D. Lane is denied and the Sales Tax Bureau's denial of refund issued May 8, 1978 is sustained.

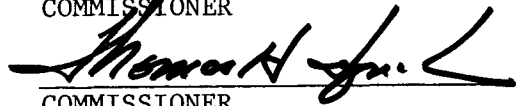
DATED: Albany, New York

June 22, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER