

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Francis Klarmann :
d/b/a A-1 Clean-Ups : AFFIDAVIT OF MAILING
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 6/1/74 - 5/31/77. :

State of New York
County of Albany

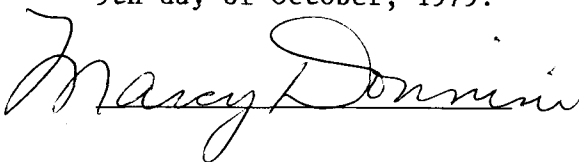
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Joseph Franco the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

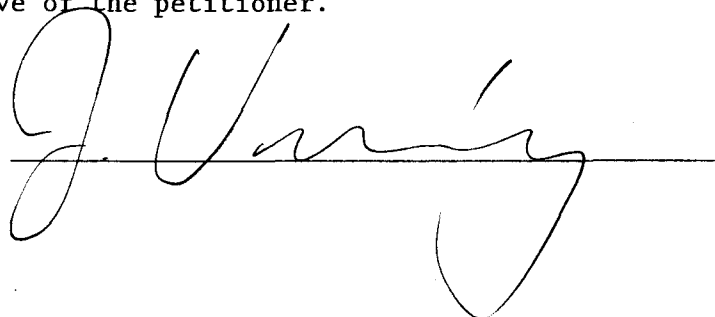
Mr. Joseph Franco
69 E. Nicholai St.
Hicksville, NY 11801

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
9th day of October, 1979.


Nancy Donnan


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
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Francis Klarmann :
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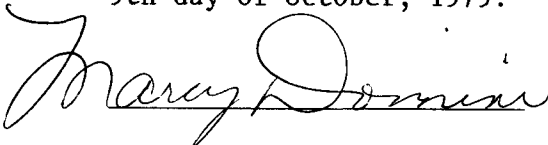
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Francis Klarmann, d/b/a A-1 Clean-Ups, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

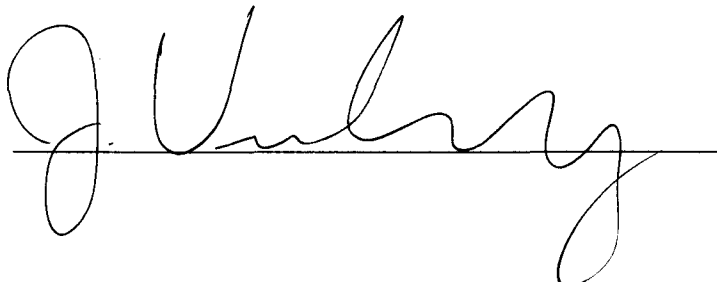
Francis Klarmann
d/b/a A-1 Clean-Ups
17 Dante Ave.
Hicksville, NY 11081

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
9th day of October, 1979.


Mary Domin


Jay Vredenburg

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

October 9, 1979

Francis Klarmann
d/b/a A-1 Clean-Ups
17 Dante Ave.
Hicksville, NY 11081

Dear Mr. Klarmann:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph Franco
69 E. Nicholai St.
Hicksville, NY 11801
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
FRANCIS KLARMANN D/B/A	:	DETERMINATION
A-1 CLEAN-UPS	:	
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, 1974 through May 31, 1977.	:	

Applicant, Francis Klarmann d/b/a A-1 Clean-Ups, 17 Dante Avenue, Hicksville, New York 11801, 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, 1974 through May 31, 1977 (File No. 21233).

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 March 21, 1979 at 10:45 A.M. Applicant appeared with Joseph Franco, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUES

I. Whether applicant was required to collect sales tax on the services of debris removal from construction sites, for the period June 1, 1974 through August 31, 1976.

II. Whether applicant's contract for debris removal services with the Long Island Railroad was subject to sales tax.

FINDINGS OF FACT

1. On December 2, 1977 as the 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, Francis Klarmann d/b/a A-1 Clean-Ups, for the period

June 1, 1974 through May 31, 1977 in the amount of \$780.50, plus penalty and interest of \$414.12, for a total of \$1,194.62.

2. Applicant was engaged in the service of rubbish and debris removal. Approximately 80% of applicant's customers were builders and home improvement contractors.

3. On audit, the Sales Tax Bureau reviewed applicant's sales for the entire period at issue. It was determined that applicant did not collect sales tax on debris removal services rendered to contractors who were performing capital improvement work, nor did he collect sales tax on services performed pursuant to a contract with the Long Island Railroad. The receipts from said services amounted to \$18,470.00; therefore, the Sales Tax Bureau assessed \$1,366.10 in sales tax on said amount.

An examination of purchase invoices disclosed use tax due of \$106.20.

Applicant agreed to and did pay \$691.80 to the Sales Tax Bureau, which represented the use tax and that portion of the sales tax determined for the period September 1, 1976 through May 31, 1977.

4. The Sales Tax Bureau based its determination on 20 NYCRR 527.7 which provides that "[a]ll services of trash, garbage or debris removal are taxable, whether from inside or outside of a building, a construction site or vacant land."

Said regulation was promulgated on August 4, 1976 and became effective on September 1, 1976.

5. Applicant disagreed with the Sales Tax Bureau's application of Regulation 527.7(b)(2) to periods prior to the effective date of said regulation.

6. On October 4, 1965, in response to applicant's request for a ruling regarding the application of sales tax on his services, the Sales Tax Bureau issued a letter which stated, in pertinent part, the following:

When your services are performed in conjunction with a contractor who is engaged in a lump-sum contract which results in a capital improvement, and the contractor presents a properly completed Certificate of Capital Improvement (ST-124) to you, you would not collect the tax.

7. On June 13, 1974, the Long Island Railroad awarded applicant a contract for the clean up and removal of miscellaneous debris, and for the cutting, clean up and removal of weeds from its central branch in the amount of \$2,250.00.

The bid proposal contained the following statement:

The Long Island Railroad Company is a wholly-owned subsidiary corporation of the Metropolitan Transportation Authority, a governmental instrumentality of the State of New York, and by authority of sections 1266 and 1275 of the Public Authorities Law of the State of New York, as amended, is exempt from New York State and local taxes.

CONCLUSIONS OF LAW

A. That applicant relied upon and followed the Sales Tax Bureau's ruling received by him on the collection of sales tax on debris removal services; therefore, in good faith, he did not collect sales tax on his services which were a constituent part of a capital improvement. Applicant was not liable to collect sales tax on debris removal services which were a constituent part of a capital improvement for the period June 1, 1974 through August 31, 1976. (Matter of Greater Buffalo Press, Inc., State Tax Commission decision, August 24, 1976; Hoffman v. City of Syracuse, 2 NY2d 484.)

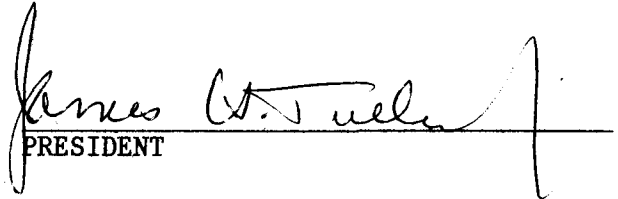
B. That the Long Island Railroad Company is an organization exempt from the imposition of sales tax under section 1116(a)(1) of the Tax Law; therefore, the services rendered by applicant for said organization were not subject to the sales tax.

C. That the application of Francis Klarmann d/b/a A-1 Clean-Ups is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on December 2, 1977 is cancelled.

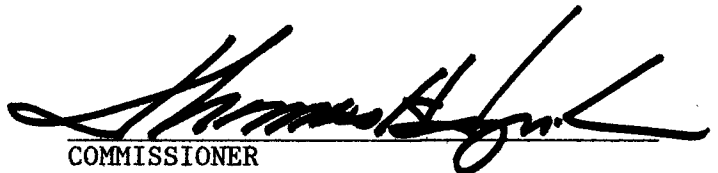
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER