

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Eastern States Electrical Contractors, Inc. :
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 3/1/72-2/28/75. :

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 25th day of April, 1980, he served the within notice of Determination by mail upon Eastern States Electrical Contractors, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eastern States Electrical Contractors, Inc.
156 E. 30th St.
New York, NY 10016

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
25th day of April, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Eastern States Electrical Contractors, Inc. :

AFFIDAVIT OF MAILING

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Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 3/1/72-2/28/75. :

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 25th day of April, 1980, he served the within notice of Determination by mail upon Joseph S. Herbert & Co. the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph S. Herbert & Co.
Empire State Bldg.
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
25th day of April, 1980.

Joanne Krapp

J. Vredenburg

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

April 25, 1980

Eastern States Electrical Contractors, Inc.
156 E. 30th St.
New York, NY 10016

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:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph S. Herbert & Co.
Empire State Bldg.
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 | : | |
| | : | |
| EASTERN STATES ELECTRICAL CONTRACTORS, INC. | : | 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 1, 1972 to February 28, | : | |
| 1975. | : | |

Applicant, Eastern States Electrical Contractors, Inc., 156 East 30th Street, New York, New York 10016, 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 1, 1972 to February 28, 1975 (File No. 16223).

On November 17, 1978, applicant informed the State Tax Commission, in writing, of the desire to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUES

I. Whether the use tax was properly assessed applicant on fixed assets included in the bulk sale of William H. Ludwig, Inc.

II. Whether the use tax was properly assessed on an automobile contended to be registered in and with sales tax having been paid to New Jersey.

III. Whether the use tax was properly assessed on items of furniture contended to have been picked up in and with sales tax having been paid to New Jersey.

IV. Whether the tax due on other items in the audit was properly assessed.

FINDINGS OF FACT

1. Applicant, Eastern States Electrical Contractors, Inc., filed New York State and local sales and use tax returns for the period March 1, 1972 through February 28, 1975.

2. On May 14, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for tax due of \$7,334.09, plus penalties and interest of \$3,243.48.

3. As a result of a field audit covering the period March 1, 1972 to February 28, 1975, additional tax was determined to be due on the purchase of capital assets and expense items. Included in the assessment was tax due on fixed assets purchased from William H. Ludwig, Inc., since no substantiation of payment was provided. Also included was additional tax at the rate of 7 percent on the purchase of a motor vehicle valued at \$4,741.00 and furniture valued at \$279.75.

4. On August 11, 1976, applicant, Eastern States Electrical Contractors, Inc., through its accountant, Lawrence E. Shoenthal, filed an application for a hearing regarding the audit results, the issues being as stated above.

5. On March 1, 1972, applicant purchased the business assets from William H. Ludwig, Inc. Included in the purchase were two motor vehicles, machinery and equipment having a total value of \$3,000.00. At the closing, applicant issued a check to Ludwig for \$210.00 representing payment of sales tax on the fixed assets transferred.

6. Applicant contends that sales tax had been paid to New Jersey on the motor vehicle and furniture described in '3' above.

Applicant offered no documentary or other substantial evidence to support applicant's contention that the tax on the automobile and furniture was paid to and due New Jersey or that other items in the audit were in error.

CONCLUSIONS OF LAW

A. That applicant, Eastern States Electrical Contractors, Inc., properly paid the sales tax on fixed assets purchased from William H. Ludwig, Inc. as evidenced by a copy of the Bill of Sale dated February 29, 1972.

B. That the motor vehicle and furniture in question is subject to the additional tax rate of 7 percent as assessed since no substantiation was made that conditions of section 1118(7) of the Tax Law, stating in part that; "...to the extent that a retail sales or use tax was legally due and paid thereon without right to a refund or credit thereof...", were met.

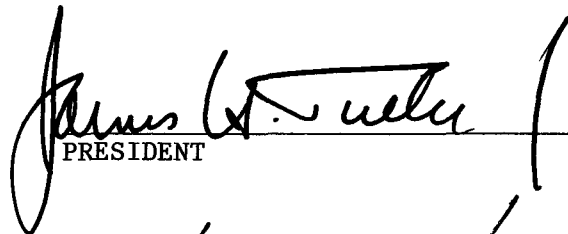
C. That other items in the audit were properly assessed.

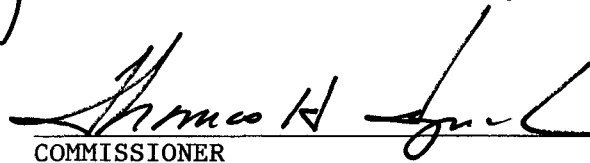
D. That the application of Eastern States Electrical Contractors, Inc. is granted to the extent that tax due of \$210.00 for the purchase of fixed assets is cancelled. The Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 14, 1976; and that except as so granted, the application is in all other respects denied.

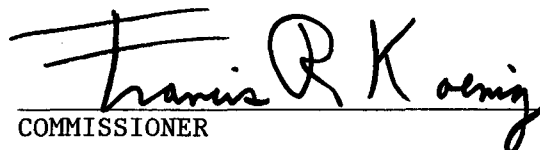
DATED: Albany, New York

STATE TAX COMMISSION

APR 25 1980


PRESIDENT


COMMISSIONER


COMMISSIONER