

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Empire Ace Insulation Mfg. Corp. :
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 3/1/74-2/28/77. :

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 19th day of September, 1980, he served the within notice of Decision by mail upon Empire Ace Insulation Mfg. Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

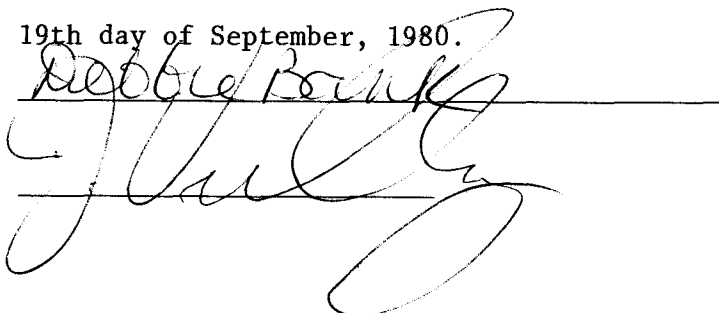
Empire Ace Insulation Mfg. Corp.
1 Cozene Ave.
Brooklyn, NY

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

19th day of September, 1980.



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Empire Ace Insulation Mfg. Corp. :
for Redetermination of a Deficiency or a Revision :
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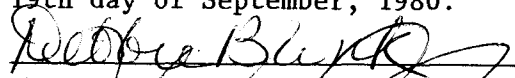

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by mail upon Nathan Kevelson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Nathan Kevelson
Empire Ace Insulation Mfg. Corp.
1 Cozene Ave.
Brooklyn, NY

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
19th day of September, 1980.

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

September 19, 1980

Empire Ace Insulation Mfg. Corp.
1 Cozene Ave.
Brooklyn, NY

Gentlemen:

Please take notice of the Decision 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
Nathan Kevelson
Empire Ace Insulation Mfg. Corp.
1 Cozene Ave.
Brooklyn, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
EMPIRE ACE INSULATION MFG. CORP. : DECISION
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, 1974 through Feb- :
ruary 28, 1977 :

Petitioner Empire Ace Insulation Mfg. Corp., 1 Cozene Avenue, Brooklyn, New York filed a petition 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, 1974 through February 28, 1977 (File No. 20756).

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 17, 1980 at 2:45 P.M. Petitioner appeared by its president, Nathan Kevelson. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether certain expense items and fixed assets purchased by petitioner for use in its business operations are subject to tax.

FINDINGS OF FACT

1. Petitioner, Empire Ace Insulation Mfg. Corp., is engaged in the manufacture and sale of insulation.
2. On October 21, 1977, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period March 1, 1974 through February 28, 1977 for taxes due of \$890.88 plus penalty and interest of \$427.90 for a total of \$1,318.78.

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3. On audit, the Audit Division examined expense purchases for February 1977 in the following accounts: factory expense, repairs and maintenance, advertising, auto and truck rental, auto and truck expense, office expense and selling expense. The Audit Division found that petitioner failed to pay a sales or use tax on a maintenance contract for \$62.00 and a repair to a leased vehicle amounting to \$227.55. Said purchases were charged to the repairs and maintenance account and the auto and truck rental account, respectively. A margin of error was determined for both accounts and was applied to total purchases in each account for the audit period resulting in total expense purchases subject to use tax of \$11,302.00. The Audit Division also found that petitioner acquired a calculator for \$75.00 on which no sales tax was paid.

4. Petitioner argued that the purchases at issue are used in the operation of its business and the cost of such purchases are reflected in the selling price of the product manufactured; therefore, petitioner concluded that the sales tax will be ultimately paid by the retail consumer of its product. Petitioner also contended that the vehicle repaired was a salesman's car which is used primarily outside of New York State.

5. The repair work on the leased vehicle was performed in New York City.

6. Subsequent to the issuance of the aforementioned notice, the Audit Division expanded its test to include all purchases for the quarter ending February 28, 1977. The Audit Division examined purchases in the same accounts as in the original test and found similar discrepancies.

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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

Journal of Management Inquiry 18(6) 709–724
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1944-1945: 1st and 2nd years of the war with Germany.

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

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SECRET

DATE OF BIRTH: 08-09-1967 PLACE OF BIRTH: [REDACTED] SEX: M

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

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Had the tax been recomputed based on the expanded test, it would have resulted in a tax deficiency of \$983.00. However, the Audit Division concluded that the additional months tested supported the validity of its initial test and, therefore, did not assert a greater deficiency.

7. Petitioner acted in good faith at all times and did not attempt to evade the tax.

CONCLUSIONS OF LAW

A. That the calculator purchased by petitioner constituted a retail sale of tangible personal property subject to the tax imposed under section 1105(a) of the Tax Law; that the services described in Finding of Fact "3" were not purchased for resale and therefore are subject to the tax imposed under section 1105(c) of the Tax Law. Accordingly, petitioner is liable for tax on such purchases in accordance with the provisions of section 1133(b) of the Tax Law.

B. That the penalties and interest in excess of the minimum statutory rate are cancelled.

C. That the petition of Empire Ace Insulation Mfg. Corp. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 21, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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