

STATE OF NEW YORK  
STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of  
Fox Fabricating Co. :  
:  
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 12/1/70-11/30/73. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Fox Fabricating Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

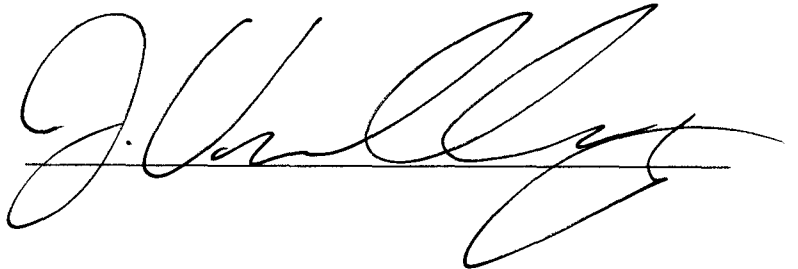
Fox Fabricating Co.  
P.O. Box 456  
Hudson Falls, NY 12839

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  
13th day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Fox Fabricating Co. :  
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 12/1/70-11/30/73. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Ivan W. Fox 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. Ivan W. Fox  
c/o Fox Fabricating Co.  
P.O. Box 456  
Hudson Falls, NY 12839

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  
13th day of February, 1980.

Joanne Krapp

J. Vredenburg

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

February 13, 1980

Fox Fabricating Co.  
P.O. Box 456  
Hudson Falls, NY 12839

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  
Ivan W. Fox  
c/o Fox Fabricating Co.  
P.O. Box 456  
Hudson Falls, NY 12839  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
FOX FABRICATING COMPANY	:	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	:	
December 1, 1970 through November 30, 1973.	:	

---

Applicant, Fox Fabricating Company, Blvd. Glens Falls, P.O. Box 456, Hudson Falls, New York 12839, 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 December 1, 1970 through November 30, 1973 (File No. 11124).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 24, 1979 at 2:45 P.M. Applicant appeared by Ivan W. Fox, President. The Audit Division appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

#### ISSUE

Whether applicant timely filed an application for a hearing to review a determination.

#### FINDINGS OF FACT

1. On April 30, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period December 1, 1970 through November 30, 1973, for tax due of \$3,518.38 plus penalties and interest. The notice was issued as the result of a field audit.

2. On March 26, 1975, applicant filed an Application for Hearing to Review Determination regarding the above notice. The application was filed on the grounds that applicant was not aware that the tax was fixed unless, the application for hearing was made within 90 days.

3. On June 30, 1975, an informal conference was held and adjustments made to the audit results. A Notice of Assessment Review was issued by the Sales Tax Bureau adjusting the tax due to \$2,319.58 plus penalties and interest of \$1,042.77.

4. Applicant offered no evidence to show that a timely application had been made. It based its arguments on the fact that an informal conference was held even though a timely protest was not filed and contended that the conference nullified the 90-day limit.

5. Applicant conceded the application for a hearing was not filed on time.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law states in part that a determination shall finally and irrevocably fix the tax unless the person against whom the tax was assessed, within ninety days after giving of notice of such determination, shall apply to the tax commission for a hearing, or unless the tax commission of its own motion shall redetermine the same.

B. That the application for a hearing was not filed within the time required in section 1138(a).

C. That the application of Fox Fabricating Company is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due as amended by the Notice of Assessment Review which reflects adjusted tax due of \$2,319.58 is sustained.

DATED: Albany, New York

FEB 13 1980

STATE TAX COMMISSION

*James W. Tuel*

PRESIDENT

*Thomas H. ...*

COMMISSIONER

COMMISSIONER