

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Griffin Plumbing & Heating 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 3/29/74 - 10/31/76. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

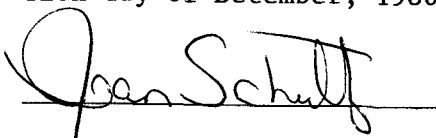
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Determination by mail upon Griffin Plumbing & Heating Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

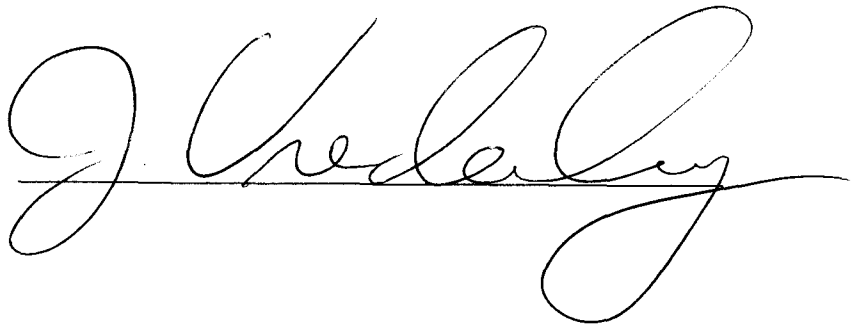
Griffin Plumbing & Heating Corp.
18 Knell Dr.
Massapequa, NY 11762

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
12th day of December, 1980.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Griffin Plumbing & Heating Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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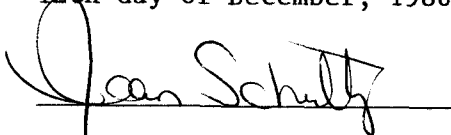
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Determination by mail upon Harvey O. Garbar the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

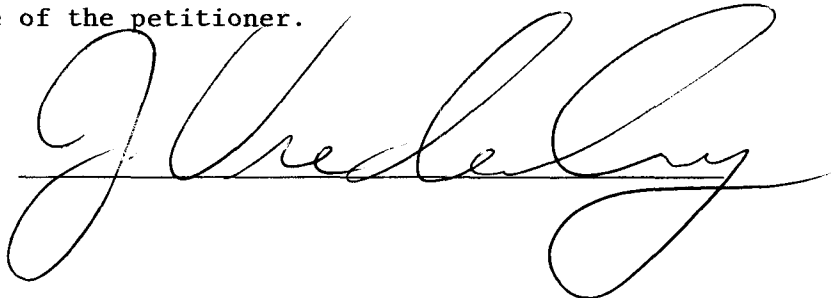
Mr. Harvey O. Garbar
Goldstein & Garbar
1800 Bellmore Ave.
Bellmore, NY 11710

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
12th day of December, 1980.


Jean Schultz


Jay Vredenburg

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

December 12, 1980

Griffin Plumbing & Heating Corp.
18 Knell Dr.
Massapequa, NY 11762

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) 1139 & 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
Harvey O. Garbar
Goldstein & Garbar
1800 Bellmore Ave.
Bellmore, NY 11710
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
GRIFFIN PLUMBING & HEATING CORP.	:	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 29, 1974 through October 31,	:	
1976.	:	

Applicant, Griffin Plumbing & Heating Corp., 18 Knell Drive, Massapequa, New York 11762, 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 29, 1974 through October 31, 1976 (File No. 21406).

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 January 21, 1980 at 2:45 P.M. Applicant appeared by Harvey O. Garbar, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether applicant's payments to subcontractors for the pumping of a cesspool in connection with the installation of a sewer line were subject to sales tax.

FINDINGS OF FACT

1. On March 3, 1977, applicant, Griffin Plumbing & Heating Corp., filed an Application For Credit or Refund of State and Local Sales or Use Tax (ST-137) covering the period March 29, 1974 through October 31, 1976. Said application claimed a refund for sales taxes of \$2,734.30 paid to subcontractors for

pumping cesspools on the grounds that such services performed in conjunction with a capital improvement were not subject to sales tax.

2. On December 15, 1977, the Audit Division denied applicant's refund claim in full on the basis that the work performed by its subcontractors was maintaining, servicing or repairing real property and therefore subject to tax.

3. Applicant installed and connected sewer lines for individual homeowners. The municipalities of Nassau County required that the existing cesspool or septic tank on the property be pumped dry and filled with a clean material as part of the sewer installation. In compliance with this requirement, applicant subcontracted for such services.

CONCLUSIONS OF LAW

A. That the work performed by applicant as described in Finding of Fact "3" constituted a capital improvement to real property; that the service of pumping a cesspool in and of itself is a service subject to tax under section 1105(c)(5) of the Tax Law; however, in the instant case, such services were a constituent part of the services performed in adding to or improving real property by a capital improvement and therefore are not subject to tax in accordance with 20 NYCRR 527.7(b)(4).

B. That the application of Griffin Plumbing & Heating Corp. is granted and the Audit Division is directed to refund the sum of \$2,724.30 together with such interest as may be lawfully owing.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

James H. Tully
PRESIDENT

Thomas H. Gull
COMMISSIONER

Francis R. Koenig
COMMISSIONER