

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Estate of Abraham Hollander :
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 9/1/73-11/30/75. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

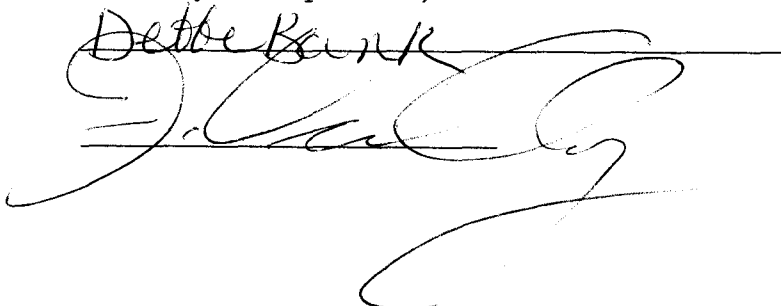
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by mail upon Estate of Abraham Hollander, the petitioner in the within proceeding,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

Estate of Abraham Hollander
c/o Miriam Hollander
460 Neptune Ave.
Brooklyn, NY 11235

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
Estate of Abraham Hollander :

AFFIDAVIT OF MAILING

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 9/1/73-11/30/75. :

State of New York
County of Albany

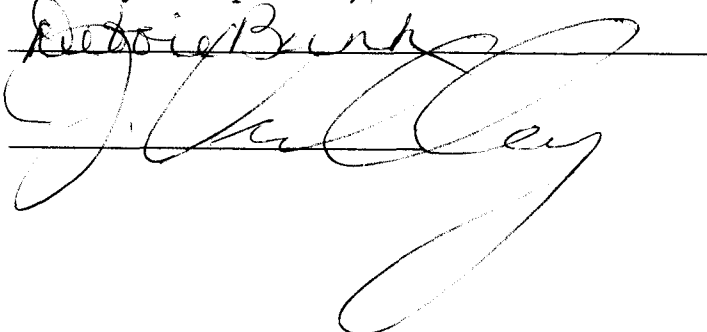
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by mail upon Joseph Robinson the representative of the petitioner in the within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

Mr. Joseph Robinson
1371 E. 21st St.
Brooklyn, NY 11210

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.



Notary Public

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

September 19, 1980

Estate of Abraham Hollander
c/o Miriam Hollander
460 Neptune Ave.
Brooklyn, NY 11235

To the Executor:

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
Joseph Robinson
1371 E. 21st St.
Brooklyn, NY 11210
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ESTATE OF ABRAHAM HOLLANDER	:	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 Periods September 1, 1973:	:	
through November 30, 1975.	:	

Petitioner, Estate of Abraham Hollander c/o Miriam Hollander, 460 Neptune 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 September 1, 1973 through November 30, 1975 (File No. 17644).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1979 at 9:15 A.M. Petitioner appeared by Joseph Robinson, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner is liable for tax on purchases used in the performance of monument installations.

FINDINGS OF FACT

1. Petitioner, Estate of Abraham Hollander, is a monument dealer located at 1723 Emmons Avenue, Brooklyn, New York. Petitioner's activities consisted of designing, delivering and erecting monuments. In the course of business, petitioner purchases monuments, as well as the services of inscribing and sandblasting said monuments.

2. On November 10, 1976, 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, Estate of Abraham Hollander, for the period September 1, 1973 through November 30, 1975 for taxes due of \$1,747.96 plus penalty and interest of \$284.52 for a total of \$2,032.48.

3. On audit, the Audit Division examined purchase invoices for the months of June, July and August 1975 and found that petitioner failed to pay a sales or use tax on 50.02 percent of its purchases. Such purchases were for monuments, inscriptions and sandblasting. The aforesaid percentage was applied to total purchases for the audit period of \$117,565.00 to arrive at additional taxable purchases of \$58,806.01. The applicable tax rates were based on the percentage of sales made to tax jurisdictions during the period June 1, 1975 through August 31, 1975.

4. Petitioner contended that the vendor of the tangible personal property and services at issue should be the party responsible for the payment of the taxes due.

CONCLUSIONS OF LAW

A. That the sale and installation of a monument constitutes a capital improvement to real property. That section 1101(b)(4)(i) of the Tax Law, as amended by Chapter 473, Laws 1969, provides, in part, that a contractor is liable for tax on materials purchased for use or consumption in capital improvements to real property. Accordingly, petitioner is liable for tax on the purchase of stone monuments.

B. That inscription and sandblasting services are subject to tax imposed under sections 1105(c)(2) and (3) of the Tax Law, respectively. That since petitioner is engaged in the performance of capital improvements, such services were not purchased for resale and, therefore, subject to the tax.

C. That petitioner is liable for sales taxes which the vendor failed to collect in accordance with the provisions of section 1133(b) of the Tax Law.

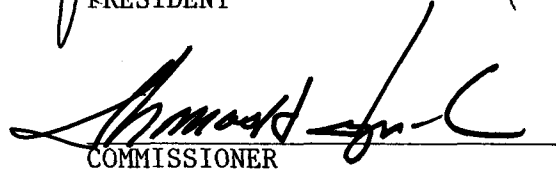
D. That the petition of the Estate of Abraham Hollander c/o Miriam Hollander is denied and the Notice of Determination and Demand For Payment of Sales and Use Taxes Due issued November 10, 1976 is sustained.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER