

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Vincent S. Jerry & Sons, 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 22nd day of February, 1980, he served the within notice of Determination by mail upon Vincent S. Jerry & Sons, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

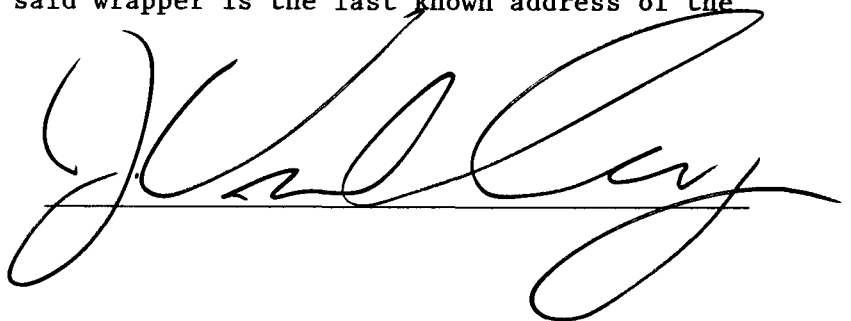
Vincent S. Jerry & Sons, Inc.  
5 MacDonough St.  
Plattsburgh, NY

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  
22nd day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Vincent S. Jerry & Sons, Inc. :

for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
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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 22nd day of February, 1980, he served the within notice of Determination by mail upon Fred B. Wander the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

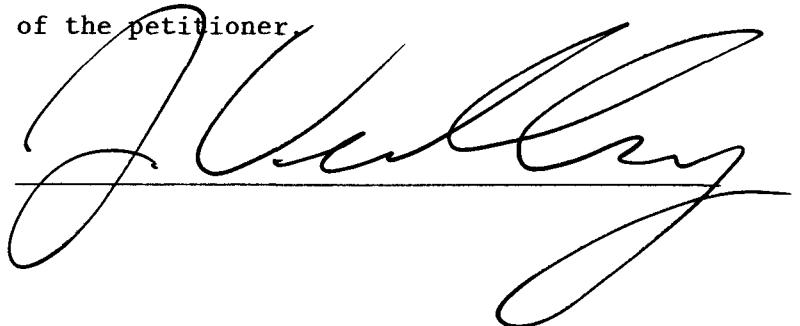
Mr. Fred B. Wander  
O'Connell & Aronowitz, P.C.  
100 State St.  
Albany, NY 12210

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  
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

Vincent S. Jerry & Sons, Inc.  
5 MacDonough St.  
Plattsburgh, NY

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  
Fred B. Wander  
O'Connell & Aronowitz, P.C.  
100 State St.  
Albany, NY 12210  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
VINCENT S. JERRY & SONS, 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..	:	

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Applicant, Vincent S. Jerry and Sons, Inc., 5 MacDonough Street, Plattsburgh, New York, 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. 12841).

A formal hearing was held before Louis M. Klein, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 14, 1977 at 9:15 A.M. Applicant appeared by O'Connell and Aronowitz, P.C. (Fred B. Wander, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Marilyn Kaltenborn, Esq., of counsel).

ISSUE

Whether payments for rental of machinery by a contractor who took possession of the machinery in New York, transported it out of the State and subsequently purchased it, are subject to sales tax and, if so, to what extent.

FINDINGS OF FACT

1. On November 3, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Vincent S. Jerry and Sons, Inc. for the period March 1, 1972 to February 28, 1975. The tax due was

\$25,185.65, plus penalty and interest of \$9,558.52, for a total due of \$34,744.17. On June 5, 1975, prior to the issuance of the notice, applicant agreed to an extension of the time within which the Sales Tax Bureau could make a determination until December 20, 1975.

2. Applicant sells, rents and services farm and industrial equipment from a New York location. In the period involved, applicant had several transactions with Industrial Contractors and Developers, Inc. ("Industrial"), Tewksbury, Massachusetts. Two of the transactions involved bulldozers which Industrial rented from applicant, transported to Massachusetts and then several months later, purchased from applicant.

3. Industrial took possession of the bulldozers from applicant at applicant's New York location. Industrial then transported them to Massachusetts and paid monthly rentals to applicant, as per applicant's invoices. While the machines were still in Massachusetts, Industrial entered into a conditional sales contract to purchase the bulldozers. The purchase price was a gross amount reduced by the rental payments that Industrial had made. This was the pattern of business for applicant, and it did not always result in a sale.

4. The Sales Tax Bureau conceded that the following invoices involved transactions not subject to sales tax:

<u>INVOICE NUMBER</u>	<u>GROSS PRICE</u>
10970	\$ 3,500.00
6645	3,500.00
14986	3,500.00
14985	3,500.00
11086	3,500.00
16487	3,500.00
15152	3,500.00
16569	6,000.00
16492	6,000.00
23458	3,500.00
16643	3,500.00
16555	3,500.00
16633	33,000.00
16596	104,037.00
16640	5,806.00
29519	6,500.00
26670	6,500.00
32539	6,500.00
29687	6,500.00
29609	6,500.00
10296	<u>(4,117.00)</u>
Gross Total	\$218,226.00
Rate of Tax	x .07
Amount of Tax Conceded by Sales Tax Bureau	<u>\$ 15,275.82</u>

5. The Sales Tax Bureau agreed to further reduce the November 3, 1975 notice if applicant provided resale exemption certificates for sales represented by invoice number 16685 for \$9,500, and by invoice number 6646 for \$31,250. Applicant has provided the resale certificates without objection by the Sales Tax Bureau; therefore, the notice is further reduced by \$2,852.50.

6. The November 3, 1975 notice, as amended by the concessions described in Findings of Fact "4" and "5", results in a tax deficiency in the sum of \$7,057.33, plus applicable penalty and interest. This amount represents the sales tax on the monthly rental and subsequent sale of the bulldozers described in Finding of Fact "3" indicated by the following invoices:

<u>INVOICE NUMBER</u>	<u>GROSS PRICE</u>
10969	\$ 3,600.00
6678	3,600.00
15042	3,600.00
11161	3,600.00
11050	3,600.00
14987	2,625.00
14999	3,600.00
15193	3,600.00
15103	3,600.00
15042	3,600.00
16486	3,600.00
15151	3,600.00
15073	3,600.00
16698	3,600.00
16642	3,600.00
16554	3,600.00
23468	3,600.00
16660	3,600.00
16575	3,600.00
23645	<u>33,394.00</u>
Gross Total	\$100,819.00
Rate of Tax	x .07
Remaining Tax Deficiency	<u>\$ 7,057.33</u>

CONCLUSIONS OF LAW

A. That the rental payments for both bulldozers described in Findings of Fact "2" and "3" for the first month's rental, are receipts from a retail sale in New York of tangible personal property in accordance with section 1101(b)(4) and section 1101(b)(5) of the Tax Law. The total payments received were \$7,200.00.

B. That the rental of the bulldozers described in Findings of Fact "2" and "3" was on a month-to-month basis; therefore, those rental payments for the months after those described in Conclusion of Law "A" are receipts from transactions not subject to taxation under Articles 28 and 29 of the Tax Law.

C. That the subsequent sale was a sale of tangible personal property outside of New York and the receipts from said sale are not subject to taxation under Articles 28 and 29 of the Tax Law.

D. That the application of Vincent S. Jerry and Sons, Inc. is granted to the extent provided in Conclusions of Law "B" and "C". That the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 3, 1975, in accordance with Findings of Fact "4" and "5"; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

  
PRESIDENT  
COMMISSIONER

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COMMISSIONER