

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dennis Maud :
d/b/a Dennis Maud Tree Expert Co. : 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 3/1/74 - 12/31/76. :

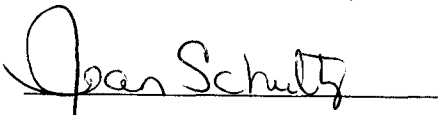
State of New York
County of Albany

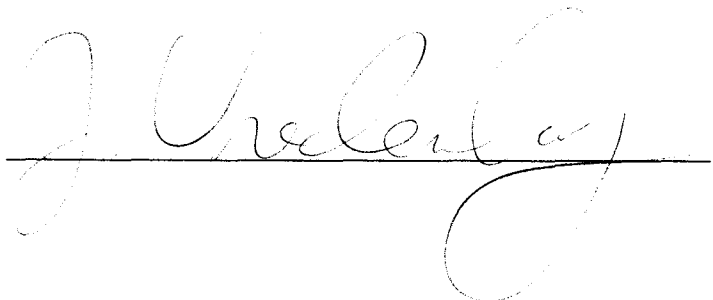
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by mail upon Dennis Maud, d/b/a Dennis Maud Tree Expert Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dennis Maud
d/b/a Dennis Maud Tree Expert Co.
Dane St.
Blue Point, NY 11715
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.


Joan Schultz


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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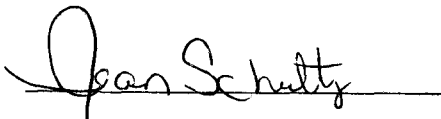
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by mail upon John F. Petitt the representative of the petitioner in the within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

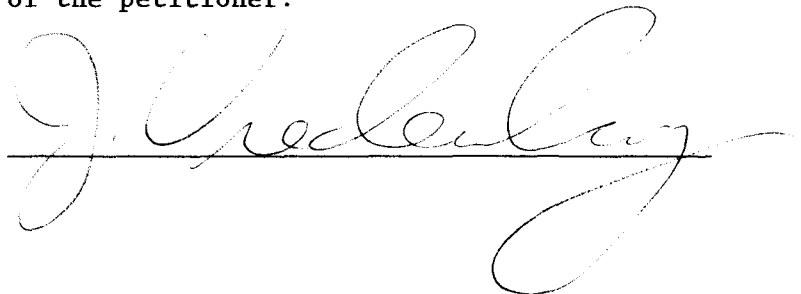
Mr. John F. Petitt
149 Main St.
Westhampton Beach, NY 11978

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.





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

December 12, 1980

Dennis Maud
d/b/a Dennis Maud Tree Expert Co.
Dane St.
Blue Point, NY 11715

Dear Mr. Maud:

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
John F. Petitt
149 Main St.
Westhampton Beach, NY 11978
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DENNIS MAUD	:	
d/b/a DENNIS MAUD TREE EXPERT CO.	:	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 December 31, 1976.	:	

Petitioner, Dennis Maud d/b/a Dennis Maud Tree Expert Co., Dane Street, Blue Point, New York 11715, 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 December 31, 1976 (File No. 20847).

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 September 29, 1980 at 1:15 P.M. Petitioner appeared by John F. Pettit, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether tree removal and repair services are subject to the imposition of sales tax.

FINDINGS OF FACT

1. Petitioner, Dennis Maud d/b/a Dennis Maud Tree Expert Co., operated a tree service that performed such services as spraying, pruning and fertilizing. Additionally, a substantial portion of petitioner's work involved the removal

and repair of damaged trees caused by a storm. The business was sold on December 10, 1976.

2. On June 7, 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 December 10, 1976 for taxes due of \$8,515.53, plus penalty and interest of \$3,699.68, for a total of \$12,215.21.

3. On audit, the Audit Division analyzed petitioner's nontaxable sales recorded in the cash receipts journal for the periods March 1, 1974 through November 30, 1974 and March 1, 1976 through December 10, 1976. The cash receipts journal for 1975 was not available for examination at the time of the audit. Petitioner's reported nontaxable sales consisted of sales to municipalities and other exempt organizations and charges for tree removal and/or repair services after a storm. The charges for tree removal and repair services were deemed taxable and were disallowed by the Audit Division. These sales represented 55 percent of nontaxable sales for the period March 1, 1974 through November 30, 1974 and 66.91 percent for the period March 1, 1976 through December 10, 1976. The Division applied 55 percent to nontaxable sales reported on sales tax returns filed for the period March 1, 1974 through February 29, 1976 and 66.91 percent to such sales for periods thereafter which resulted in additional taxable sales of \$121,833.00 and tax due thereon of \$8,531.81.

The Audit Division also found that petitioner failed to pay over taxes of \$68.74 which were collected for the period December 1, 1976 through December 10, 1976. However, this amount is not at issue. Petitioner was also held liable for taxes of \$2,450.00 based on the value of tangible personal property transferred with the sale of the business. The audit disclosed that petitioner overpaid taxes of \$2,535.02 in the periods ending May 31, 1976 and August 31,

1976. Said amount was credited against the foregoing deficiencies leaving a balance due of \$8,515.53.

4. At the hearing, the Audit Division conceded that petitioner paid the bulk sales tax of \$2,450.00 subsequent to the audit and that the Notice should be adjusted accordingly.

5. The services at issue are rendered by petitioner after a storm, usually in an emergency situation. A typical service is to remove trees that have fallen on the roof of a house or across a driveway. Petitioner also repairs trees depending on the extent of the damage. Petitioner argued that such services are of a highly technical nature as distinguished from simply removing or cleaning up debris and thus concluded that said services are not within the purview of section 1105(c) (5) of the Tax Law.

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

CONCLUSIONS OF LAW

A. That the removal and/or repair of trees constitute services of maintaining, servicing or repairing real property within the meaning and intent of section 1105(c) (5) of the Tax Law and, therefore, are subject to the imposition of sales tax. That petitioner failed to collect the tax imposed on such services and, therefore, is liable for said taxes pursuant to section 1133(a) of the Tax Law.

B. That in accordance with Finding of Fact "4", the Notice is hereby reduced to properly reflect tax due of \$6,065.53.

C. That the penalty and interest, in excess of the minimum statutory rate, imposed pursuant to section 1145(a) of the Tax Law are cancelled.

D. That the petition of Dennis Maud d/b/a Dennis Maud Tree Expert Co. is granted to the extent indicated 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 June 7, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

James A. Tully
PRESIDENT

Thomas H. Lee
COMMISSIONER

Francis R. Koenig
COMMISSIONER