

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Perlstein Builders, Inc. :

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 6/1/71-5/31/74. :

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 11th day of January, 1980, he served the within notice of Determination by mail upon Perlstein Builders, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Perlstein Builders, Inc.
Box 785
So. Fallsburg, NY 12779

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
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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 11th day of January, 1980, he served the within notice of Determination by mail upon Gerald Orseck 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. Gerald Orseck
Orseck Law Offices
Rt. 52 E.
Liberty, NY 12754

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

Perlstein Builders, Inc.
Box 785
So. Fallsburg, NY 12779

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
Gerald Orseck
Orseck Law Offices
Rt. 52 E.
Liberty, NY 12754
Taxing Bureau's Representative

STATE TAX COMMISSION

A formal hearing was held before Neil Fabricant, Hearing Officer, on September 28, 1977 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Applicant appeared by Gerald Orseck, Esq. The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether in order for a builder to be entitled to a refund of sales tax paid, the contract between the builder and the exempt institution must specifically provide for the passage of title to the materials to such institution prior to their incorporation in the building under construction.

FINDINGS OF FACT

1. Applicant, Perlstein Builders, Inc., filed an Application for Credit or Refund of State and Local Sales or Use Taxes in April, 1974. The basis of such application was that on May 19, 1972, applicant entered into a

contract with Maimonides Institute for the construction of a certain building on a material plus profit basis. In purchasing materials for the construction of said building, applicant paid sales tax. On being advised that Maimonides Institute was an exempt organization, the request for a refund was filed for \$5,904.09.

2. On February 21, 1975, such request for refund was denied by the Sales Tax Bureau. On receipt of such denial, applicant timely filed an application for a hearing.

3. That the provisions of the contract between applicant and Maimonides Institute made no reference to the passage of title to the materials from applicant to the Institute prior to the incorporation of the materials into the structure which was constructed. The contract provisions which dealt with materials and payment therefor make no reference to passage of title to the materials.

4. That Sales Tax Information Letter No. 27 dated November 27, 1967 makes explicit the requirement that a specific contract provision is required in order for a builder to be exempt from sales tax. Namely, the contract must specifically provide that title to all materials purchased by the builder shall pass to the exempt institution prior to their installation in the building under construction.

CONCLUSIONS OF LAW

A. That in order to be entitled to the claimed refund, applicant must fall within the provisions of paragraph (15) of Subdivision (a) of Section 1115 of the Tax Law as they existed during the period in question. To obtain the refund, applicant would have had to show that the materials purchased were to be used in constructing a structure for an exempt institution and that such materials were to become an integral component part of such structure and that such materials were to be resold to such exempt institution before they became part of such structure.

B. That the contract entered into by applicant, Perlstein Builders, Inc., with Maimonides Institute did not contain a clause for the passage of title to the material to the exempt organization prior to installation; therefore, applicant is not entitled to a refund for sales tax paid on said materials.

C. That the application of Perlstein Builders, Inc. is denied and the refund denial by the Sales Tax Bureau is sustained.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER