

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Hewlett Screen & Sash Co., 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 Years 3/1/73-5/31/74. :

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 20th day of February, 1981, he served the within notice of Decision by mail upon Hewlett Screen & Sash Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hewlett Screen & Sash Co., Inc.  
1157 Broadway  
Hewlett, NY 11577

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  
20th day of February, 1981.

*Connie A. Haglund*

*[Signature]*

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

February 20, 1981

Hewlett Screen & Sash Co., Inc.  
1157 Broadway  
Hewlett, NY 11577

Gentlemen:

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  
James S. Brody  
92 Washington Ave.  
Cedarhurst, NY 11516  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HEWLETT SCREEN AND SASH CO., INC.	:	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, 1973	:	
through May 31, 1974.	:	

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Petitioner, Hewlett Screen and Sash Co., Inc., 1157 Broadway, Hewlett, New York 11577, 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, 1973 through May 31, 1974 (File No. 11588).

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 22, 1980 at 9:15 A.M. Petitioner appeared by James S. Brody, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner collected sales tax on capital improvement work and failed to pay over same to the Tax Commission.

FINDINGS OF FACT

1. Petitioner, Hewlett Screen and Sash Co., Inc., is a home improvement contractor that furnished and installed such items as combination doors and windows and aluminum siding. Petitioner also makes retail sales of similar items.

2. On February 20, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for

the period March 1, 1973 through May 31, 1974 for taxes due of \$12,500.00 plus penalty and interest of \$3,075.00 for a total of \$15,575.00.

3. The Sales Tax Bureau, in an examination of petitioner's books and records, found that 22 percent of petitioners purchases for April 1974 and some sales contracts for capital improvement work were not available. An analysis of available sales contracts disclosed some contracts with sales tax separately stated thereon and others contained a statement "plus applicable sales tax". Based on this analysis, the auditor concluded that petitioner erroneously collected tax on capital improvements and failed to pay such taxes to the Sales Tax Bureau. The auditor decided not to proceed any further with the audit because the records were incomplete and estimated petitioner's tax liability to be \$12,500.00.

4. Petitioner timely filed a petition for revision of the Sales Tax Bureau's determination.

5. On January 20, 1976, as a result of an informal conference, the Sales Tax Bureau recommended that the tax liability be revised to \$6,012.56. Said revision was based on findings from a previous audit of petitioner's records for the period June 1, 1969 through February 28, 1973. The Sales Tax Bureau's computation of the revised tax due considered petitioner's gross sales, other than sales for resale, as taxable sales. This amount was adjusted to allow for materials purchased on which sales tax was paid.

6. Petitioner's sales contracts for capital improvement work reviewed by the Sales Tax Bureau were actually an estimate or proposal of the cost of the work to be performed. Said documents were not signed by the purchaser and without such acceptance, they were not contracts. Petitioner issued an invoice to the customer upon completion of work.

The aforementioned proposals describes the work to be performed, the cost for such work and either a separate amount for sales tax or a statement "plus applicable sales tax." The references to sales tax is to protect petitioner in the event that the customer does not provide a Certificate of Capital Improvement. Petitioner's invoices to customers do not show any amount for sales tax. Petitioner's cash receipts journal verifies that customers paid the invoice amount and thus petitioner did not collect sales tax on capital improvements.

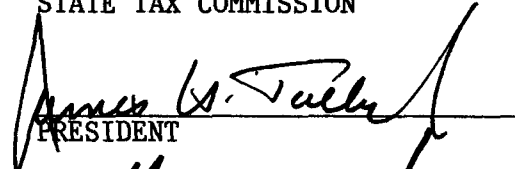
CONCLUSIONS OF LAW

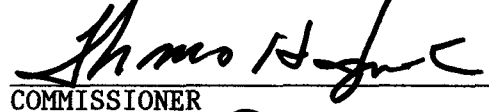
A. That in accordance with Finding of Fact "6", petitioner did not collect sales tax on capital improvement work; therefore, the Audit Division's determination of additional sales taxes due for the period March 1, 1973 through May 31, 1974 was erroneous.

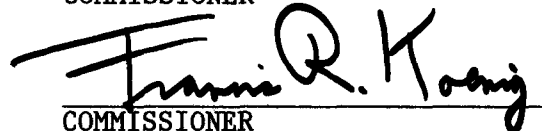
B. That the petition of Hewlett Screen and Sash Co., Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 20, 1975, is cancelled.

DATED: Albany, New York  
FEB 20 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

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Mr. James S. Brody  
92 Washington Ave.  
Cedarhurst, NY 11516

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.

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Sworn to before me this  
20th day of February, 1981.

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