

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

PAUL B. COBURN
SECRETARY
Telephone: (518) 457-6162

April 3, 1981

Lew-Port Construction Corp.
Lew-Port Industrial Park
Balmer Rd.
Youngstown, NY 14174

Gentlemen:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review this decision must be commenced within 4 months from the date of this notice.

Inquires concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the undersigned.

Very truly yours,

PAUL B. COBURN
SECRETARY TO THE
STATE TAX COMMISSION

cc: Petitioner's Representative
Lawrence E. Salada
Salada, Wynne, Loncto & Kling, P.C.
256 Third St.
Niagara Falls, NY 14303
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Lew-Port Construction Corp.	:	<u>DEFAULT ORDER</u>
Lew-Port Industrial Park	:	81-P-10
for Revision or for Refund of Sales & Use Tax	:	
under Article(s) 28 & 29 of the Tax Law	:	
for the Period 9/1/74-2/28/78.	:	

Petitioner(s) Lew-Port Construction Corp., Lew-Port Industrial Park filed a petition for revision or for refund of Sales & Use Tax under Article(s) 28 & 29 of the Tax Law for the Period 9/1/74-2/28/78. File No. 27896.

Under Section 601.5 of the State Tax Commission Rules of Practice and Procedure, a notice was served on the petitioner(s) to file a perfected petition. Notice to file the perfected petition was sent to the petitioner(s) last known address. Petitioner(s) failed to file a perfected petition. A default has been duly noted.

Now on motion of the Secretary to the State Tax Commission, it is

ORDERED that the petition of Lew-Port Construction Corp., Lew-Port Industrial Park be and the same is hereby denied.

DEFAULT ORDER
ADOPTED BY THE STATE TAX COMMISSION
ALBANY, NEW YORK
APRIL 3, 1981

April 15, 1981

Lawrence E. Salada
Certified Public Accountant
Salada, Wynne, Loncto & Kling, P. C.
Two Fifty-six Third Street
Niagara Falls, New York 14303

RE: LEW-PORT CONSTRUCTION CORP.
LEW-PORT INDUSTRIAL PARK

Dear Mr. Salada:

This is in reply to your letter of April 8, 1981
with reference to the above named taxpayer.

The document that you filed was a "Petition" and
not a "Perfected Petition" as is required by the Rules of
Practice and Procedure.

However, your letter of April 8, 1981 will be
considered to be a motion to vacate the default order dated
April 3, 1981.

You are hereby advised that the default order dated
April 3, 1981 for failure to file a perfected petition is
vacated upon condition that you file a perfected petition
within 45 days from the date of this letter.

Perfected petition forms and a copy of the Rules of
Practice and Procedure are enclosed for your convenience.

Sincerely,

PAUL B. COBURN
Secretary to the State Tax Commission

PBC:mac

Enc.

cc: John Sollecito, Director
Tax Appeals Bureau

Salada,
Wynne, Loncto & Kling, P.C.

CERTIFIED PUBLIC ACCOUNTANTS
TWO FIFTY-SIX THIRD STREET
NIAGARA FALLS, NEW YORK 14303
(716) 285-9391 694-4348

April 8, 1981

State of New York
State Tax Commission
Albany, NY 12227

Attn: Paul B. Coburn, Secretary
State Tax Commission

Subject: In the Matter of the Petition
of
Lew-Port Construction Corp.
Lew-Port Industrial Park

for Revision or for Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law
for the Period 9/1/74-2/28/78

Default Order 81-P-10

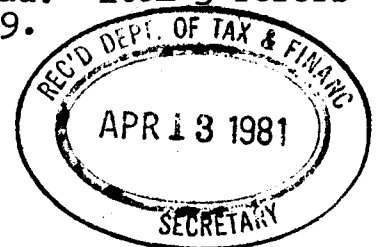
Dear Mr. Coburn:

We are in receipt of your Notice of Default Order dated April 3, 1981 relative to subject taxpayer.

The perfected Petition in question was forwarded to the State Tax Commission, Tax Appeals Bureau, to the attention of Marilyn Papineau, Principal Clerk, in January 1980 in response to a memorandum received from her January 14, 1980.

We refer you to the attached documentation:

- 1) Memo from Marilyn Papineau, Principal Clerk, to Mr. Lawrence E. Salada dated January 14, 1980 requesting Petition forms to be prepared.
- 2) NYS Form TA-11, completed Petition. Please note identification number (upper right hand box) For Official Use Only-TAB which was inserted by the State Tax Appeals Bureau. Item 3 refers to a tax memorandum dated February 23, 1979.



- 3) Memorandum to NYS Department of Taxation & Finance dated February 23, 1979 signed by Mr. Lawrence E. Salada and Mr. John L. Syms, as President of Lew-Port Construction Corp.

Following submission of this aforementioned perfected Petition, we were advised of and attended the pre-hearing conference on the matter held April 22, 1980.


On October 28, 1980, we were advised by Frank Fleury, Conferee, that the file had been forwarded to the hearing unit in order that a small claims hearing may be scheduled. We have heard no more from the State Tax Commission until your letter dated April 3, 1981.

It appears that correspondence and documentation has been lost in transit from the Conferee to your Department.

We respectfully request that you review the enclosed documentation and rescind the Default Order.

Very truly yours,

SALADA, WYNNE, LONCTO & KLING, PC



Lawrence E. Salada
Certified Public Accountant

LES/dcd
cc/John Syms



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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518)457-1723

STATE TAX COMMISSION
JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

January 14, 1980

Lawrence E. Salada
Salada, Wynne, Loncto & Kling, P.C.
256 Third St.
Niagara Falls, NY 14303

Re: Lew-Port Construction Corp.
Lew-Port Industrial Park
Sales & Use Tax
Period 9/1/74-2/28/78
TAB #27896

Dear Mr. Salada:

The Tax Appeals Bureau is in receipt of your letter of protest in the above matter.

Because this letter does not fully explain your reasons for disagreement, it is important that the enclosed petition forms be prepared and returned within 15 days.

It is also noted that a proper power of attorney is not on file. In order for you to be kept informed it is necessary that the enclosed power of attorney forms be prepared and your client's signature witnessed.

To expedite your client's protest, please return the above forms along with a copy of this letter using the envelope provided.

Very truly yours,

A handwritten signature in cursive script that reads "Marilyn J. Papineau".

Marilyn Papineau
Principal Clerk

Enclosures

TA-11 (6/77)

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

FOR OFFICIAL USE ONLY - TAB
27896-06

PETITION

Submit three (3) copies of the completed
Petition to the Tax Appeals Bureau at
the above address.

Social Security No. _____
or
Employer Identification No. 16-1013927

Taxpayer LEW-PORT CONSTRUCTION CORPORATION

Address Lew-Port Industrial Park, Balmer Rd., Youngstown, NY 14174
(Same as on return - also, state present address if different)

Taxpayer's representative, if any Lawrence E. Salada

Address 256 Third Street, Niagara Falls, NY 14303

(A taxpayer's representative cannot ordinarily be recognized unless a power of attorney is on file;
see footnote at bottom of back of this form. If a power of attorney is attached, check this box ☒)

I (We) LEW-PORT CONSTRUCTION CORPORATION, the taxpayer(s)
or representative above named do hereby petition for redetermination of deficiency or for a revision of determination or
for refund of tax paid, pursuant to the New York State Tax Law, and in support of such petition state as follows:

1. The tax in question is the (check appropriate box)

- ☐ Personal Income Tax (Article 22 of the Tax Law)
- ☐ Unincorporated Business Income Tax (Article 23 of the Tax Law)
- ☒ Sales and Compensating Use Taxes (Articles 28 and 29 of the Tax Law)
- ☐ Corporation Tax (Articles 9, 9-A, 9-B, 9-C, 13, 32 and 33 of the Tax Law)
- ☐ Highway Use Tax (Article 21 of the Tax Law)
- ☐ Other (please specify which particular tax is applied)

2. The tax in question is for the taxable year(s) or period(s)

9/1/74 - 2/28/78

3. Redetermination or revision is requested for deficiency or determination made under date of January 25, 19 79, in the amount of tax of \$ 18,871.98 and the amount of penalty and /or interest of \$ 11,479.45.

OR

Refund of \$ _____ is requested. Notice of disallowance was dated _____, 19 ____.

Refund of \$ _____ is requested. No notice of disallowance has been received, but claim for such refund was filed on or about _____, 19 ____.

4. Briefly state in the space below the ground(s) upon which relief is claimed and the facts relied upon in making this claim.

SEE ATTACHED MEMORANDUM DATED 2/23/79

5. No petition has heretofore been filed with the State Tax Commission in respect to any of the items herein before stated, nor has any relief been previously granted thereon.

Wherefore, the petitioner, LEW-PORT CONSTRUCTION CORPORATION, respectfully demands that this petition be granted.

This statement is made with the knowledge that a willfully false representation is a misdemeanor punishable under Section 210.45 of the Penal Law.

Date

Signature of Taxpayer or * Representative

NOTE: * If the petition is signed by any person other than the taxpayer, it must be accompanied by a duly executed power of attorney unless either (1) a power of attorney has already been filed, or (2) the taxpayer is a minor whose return was filed by the person signing the petition or is mentally or physically incapable of signing.

LATHAN, LUMSDEN, MCCORMICK AND CO.

CERTIFIED PUBLIC ACCOUNTANTS

TWO FIFTY-SIX THIRD STREET

NIAGARA FALLS, NEW YORK 14303 (716) 285-9391 (716) 694-4348

OFFICES IN BUFFALO, NIAGARA FALLS, LOCKPORT AND ROCHESTER, NEW YORK

MEMBERS OF THE AMERICAN GROUP OF CPA FIRMS WITH OFFICES IN PRINCIPAL CITIES

RECEIVED

DEPARTMENT OF
TAXATION & FINANCE

FEB 23 1979

**BUFFALO DISTRICT
OFFICE**

LAWRENCE E. SALADA, CPA

ROBERT C. WYNNE, CPA

Resident Partners

FRANK W. LONGTO, CPA

STEPHEN L. KLING, CPA

February 23, 1979

New York State Department of
Taxation and Finance
Buffalo District Office
State Office Building
65 Court Street
Buffalo, New York 14202

Attention: Audit Unit

Subject: Lew-Port Construction Corp.
Lew-Port Industrial Park
Balmer Road
Youngstown, New York 14174

Statement of Proposed Audit Adjustment
January 25, 1979
ID #16-1013927
Period: 2/28/75 - 8/31/77
Amount of Assessment: \$18,871.98

Dear Sir:

Taxpayer is in receipt of proposed assessment of sales and use taxes due for the period 2/28/75 through 8/31/77 in the amount of \$18,871.98.

Taxpayer disagrees with the statement and hereby requests a hearing to discuss various items of assessment to which taxpayer takes exception including, but not limited to, the following:

- 1) Lew-Port Construction Corp., during the period involved was engaged in three construction jobs, as follows:
 - a) The Lew-Port Central School District-Tax Exempt Organization.
 - b) The United States Government-Tax Exempt Organization.
 - c) Chemtrol Pollution Services-Taxable Organization.

Many of the purchase items being treated by the Agent as taxable due in fact relate to the aforementioned tax exempt organizations.

The contract with Chemtrol Pollution involved a capital improvement job. While certain expenditures were incurred on this job, a dispute arose and Lew-Port Construction Corp. was thrown off the job.

1) (Cont'd.)

As a result of the foregoing, Lew-Port Construction Corp. is insolvent and incapable of paying its present debts, nor is it capable of paying an additional use tax assessment. It would appear that the assessment of any such deficiency may well be a mere formality and not a matter of practical application.

2) The Agent has included in Schedule D - Purchases - 1975-77 disbursements to Sirco for equipment rental, and he also includes in Col. 4, under Equipment Rental, with a *, rental of equipment from Sirco for Chemtrol job, per R. T. Burgasser. It appears Agent has duplicated use tax.

3) Schedule E - Agent has included under sales, revenues received from tax exempt organizations for capital improvement jobs.

4) Schedule E - Sales - 9/74 - 2/78 - While Agent's schedule is confusing, it appears that he is including sales from the aforementioned capital improvement contracts as being taxable for sales tax purposes. (Refer Item 1 above)

Respectfully submitted;

BY: 

Lawrence E. Salada, CPA
Lathan, Lumsden, McCormick
and Co.

BY: 

John L. Syms, President
Lew-Port Construction Corp.