

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

May 6, 1983

Cedar Pine Construction Corp.  
212 Maple Ave.  
Rockville Centre, NY 11570

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 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
George P. Dunn  
41 Front St.  
Rockville Centre, NY 11570  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CEDAR PINE CONSTRUCTION CORP.	:	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 June 1, 1973	:	
through November 30, 1976.	:	

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Petitioner, Cedar Pine Construction Corp., 212 Maple Avenue, Rockville Center, New York 11570, 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 June 1, 1973 through November 30, 1976 (File No. 28133).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 12, 1982, at 9:15 A.M. Petitioner appeared by George P. Dunn, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq. of counsel).

ISSUE

Whether petitioner erroneously charged sales taxes on exempt capital improvement contracts.

FINDINGS OF FACT

1. On February 13, 1979, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Cedar Pine Construction Corp., in the amount of \$31,071.02, plus penalty and interest in the sum of \$21,141.91, for a total amount due of \$52,212.93 for the period June 1, 1973 through November 30, 1976.

2. The petitioner, by Emil Casaceli, president, executed consents extending the period of limitation for assessment of sales and use taxes for the period June 1, 1973 through November 30, 1976 to March 20, 1979.

3. During the period at issue, petitioner was engaged in business as a general contractor. Petitioner operated a shop and showroom where it made cabinets to customers' specifications. Petitioner was primarily involved in performing capital improvement work which included fire renovations.

4. In response to a complaint letter inquiring about a refund of tax charged by petitioner on a capital improvement job, the Audit Division conducted an audit of petitioner. The auditor found petitioner's billing and taxing methods to be inconsistent. On some capital improvement jobs, sales tax was charged on the entire contract amount and on others, only materials were taxed. On still other contracts, no sales tax was charged. Despite charging sales tax on these contracts, petitioner treated these sales as tax exempt for reporting purposes.

5. At a pre-hearing conference held with petitioner, disagreement between petitioner and the Audit Division was resolved except for seven contracts resulting in additional tax due of \$3,267.50. These contracts were in the possession of a former accountant, and the present accountant would not agree as to whether tax was charged until he personally reviewed them. Petitioner signed a Withdrawal of Petition and Discontinuance of Case indicating an agreed amount of tax of \$6,094.18 plus minimum statutory interest, disagreed tax in the amount of \$3,267.50 and tax cancelled in the amount of \$21,709.34.

6. At the hearing, only the above-mentioned capital improvement contracts with the seven different parties were at issue. The Audit Division presented

copies of sales invoices for jobs with three of the parties. Each of these invoices denoted a sales tax charged. Petitioner orally stipulated that tax was due on these three contracts. Additionally, the Audit Division determined that the contract with a fourth party was not included in the disagreed portion of the assessment. Therefore, only contracts with a Doug Rowan, a Mrs. Glard (or Gerard), and a Mr. Roll were in contention.

7. Petitioner presented an unsworn letter purporting to be from a Doug Rowan stating that petitioner had not charged any sales tax on contracts with Mr. Rowan's firm. In sworn testimony, however, the auditor stated that he had seen invoices to Rowan, Gerard and Roll, all with sales tax charged. The Audit Division also presented into evidence work papers on which the auditor had transcribed the contract amounts and the tax charged from these invoices. The original invoices were unavailable at the hearing due to legal problems with a former accountant who refused to release petitioner's records. Petitioner made no attempt to subpoena these records for the hearing.

#### CONCLUSIONS OF LAW

A. That, inasmuch as the auditor saw sales tax charged on original invoices which had been made in the regular course of business, and petitioner was unable to produce any credible evidence controverting this testimony, petitioner failed to meet its burden of proof pursuant to 20 NYCRR 601.8(g).

B. That tax due in the amount of \$21,709.34 is cancelled and penalty and interest reduced to the minimum statutory rate on the agreed portion of the audit pursuant to Finding of Fact "5".

C. That the petition of Cedar Pine Construction Corp. is granted to the extent indicated in Conclusion of Law "B" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 13, 1979. That the balance of the Notice is sustained with penalty and interest thereon.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Cedar Pine Construction Corp. :

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 6/1/73-11/30/76.

State of New York  
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon George P. Dunn the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George P. Dunn  
41 Front St.  
Rockville Centre, NY 11570

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  
6th day of May, 1983.

David Parchuck

William R. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Cedar Pine Construction Corp.

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Cedar Pine Construction Corp.  
212 Maple Ave.  
Rockville Centre, NY 11570

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  
6th day of May, 1983.

David Parchuck

James A. Huplund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

**P 389 758 921**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Cedar Pine Constr. Corp.</i>	
Street and No. <i>212 Maple Ave.</i>	
P.O., State and ZIP Code <i>Rockville Centre, NY 11570</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
<b>TOTAL Postage and Fees</b>	<b>\$</b>

PS Form 3800, Feb. 1982

Postmark or Date

**P 389 758 922**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>George P. Dunn</i>	
Street and No. <i>41 Front St.</i>	
P.O., State and ZIP Code <i>Rockville Centre, NY 11570</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
<b>TOTAL Postage and Fees</b>	<b>\$</b>

PS Form 3800, Feb. 1982

Postmark or Date