

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

April 27, 1983

Hudson Valley Dredge & Dock Co., Inc.
and Raymond E. Phelps
Shadowland Cove Rd.
Cheshire, MA 01225

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
Joel M. Howard
Couch & Howard
75 State St.
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hudson Valley Dredge & Dock Co., Inc. :
and Raymond E. Phelps :
: 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 :
8/1/65-8/31/77. :

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 27th day of April, 1983, he served the within notice of Decision by certified mail upon Hudson Valley Dredge & Dock Co., Inc. and Raymond E. Phelps, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hudson Valley Dredge & Dock Co., Inc.
and Raymond E. Phelps
Shadowland Cove Rd.
Cheshire, MA 01225

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
27th day of April, 1983.

David Parchuck

Annice A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hudson Valley Dredge & Dock Co., Inc. :
and Raymond E. Phelps :
: 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 8/1/65-8/31/77. :

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 27th day of April, 1983, he served the within notice of Decision by certified mail upon Joel M. Howard the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joel M. Howard
Couch & Howard
75 State St.
Albany, NY 12207

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
27th day of April, 1983.

David Parchuck

Annice A. Haglund

AUTHORIZED TO ADMINISTER
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STATE TAX COMMISSION

A formal hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on August 10, 1982 at 9:15 A.M. Petitioners appeared by Couch and Howard, P.C. (Joel M. Howard, III, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether the Audit Division correctly determined the amount of the sales and use tax liability of petitioner Hudson Valley Dredge & Dock Co., Inc. for the periods ended November 30, 1973 through August 31, 1977.

FINDINGS OF FACT

1. On October 31, 1977, due to the failure of petitioners to submit the books and records of Hudson Valley Dredge & Dock Co., Inc. ("Hudson Valley")

for audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing tax due of \$158,500.00 plus penalty and interest of \$122,120.00 for the period August 1, 1965 through August 31, 1977.

2. There is no record of Hudson Valley having registered with the Department of Taxation and Finance for the purpose of collecting sales and use taxes. There is no record of Hudson Valley having filed any sales and use tax returns.

3. The Audit Division based the notice upon information received from Hudson Valley's accountant to the effect that the corporate payroll for the calendar year 1976 amounted to \$20,288.28. On the premise that payroll accounted for 10 percent of sales, corporate sales for 1976 were projected to be \$202,882.80. Based on this projection, sales for the sales tax quarters between August 1, 1965 and August 31, 1977 were estimated to be \$50,000.00 per quarter. Tax computed thereon amounted to \$158,500.00 as assessed.

4. As the result of a pre-hearing conference, the Audit Division agreed to revise the notice to reflect the period September 1, 1973 through August 31, 1977 and a tax due therefor of \$59,389.00.

5. Hudson Valley was incorporated under the laws of the State of New York on or about November 20, 1973. It was dissolved by proclamation of the Secretary of State published on September 24, 1980. During the period November, 1973 through August 1977, Hudson Valley performed dock construction and maintenance of dock facilities in New York State and elsewhere. Petitioner Raymond E. Phelps was president of Hudson Valley during said period.

6. During the years 1976 and 1977, Hudson Valley was involved in the performance of a contract for Cirillo Brothers at their facilities in the Port of Albany, Albany, New York. The contract price for said work was \$164,000.00.

According to the payroll records of Hudson Valley, the payroll expenses for the years 1976 and 1977 were \$16,982.20 and \$6,152.57 respectively. These expenses represented approximately 14.1 percent of the value of the contract.

7. The payroll expenses of Hudson Valley for 1974 and 1975 were \$18,097.53 and \$14,512.00 respectively. The petitioners did not present any books and records other than the payroll records.

8. Petitioners offered no substantial evidence in support of their argument that the cost of labor amounted to approximately 75 percent of the value of the work performed by Hudson Valley.

9. Petitioners did not raise as an issue the imposition of penalty and interest.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides, in part, that if necessary, tax may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and services, number of employees or other factors.

B. That the Audit Division in the absence of books and records was authorized to estimate the taxes due. However, petitioners have shown that the wages paid accounted for 14.1 percent of the value of the work performed instead of 10 percent estimated by the Audit Division, and that the wages associated with the period November 20, 1973 through August 31, 1977 totaled \$55,744.30.


C. That the petition of Hudson Valley Dredge & Dock Co., Inc. and Raymond E. Phelps is granted to the extent indicated in Conclusion of Law "B" above; that the Audit Division is hereby directed to modify the Notice of Determination and

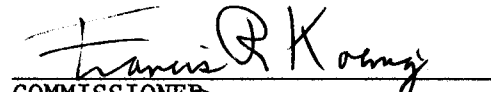
Demand for Payment of Sales and Use Taxes Due issued October 31, 1977; that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

APR 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 389 758 834
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Hudson Valley Dredge & Dock Co., Inc. and Raymond E. Phelps	
Street and No. Shadowland Cove Rd.	
P.O., State and ZIP Code Cheshire, MA 01225	
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	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 389 758 835
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Joel M. Howard Couch & Howard	
Street and No. 75 State St.	
P.O., State and ZIP Code Albany, NY 12207	
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	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982