

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

September 9, 1983

Ruemil Contract Interiors, Inc.  
c/o Jack Miller, Pres.  
55 East 9th Street  
New York, NY 10007

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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Ruemil Contract Interiors, Inc. :  
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 6/1/73-2/28/77. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

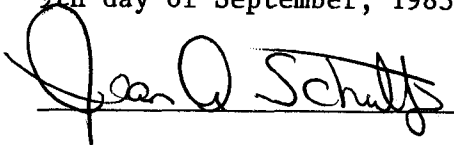
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of September, 1983, she served the within notice of Decision by certified mail upon Ruemil Contract Interiors, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

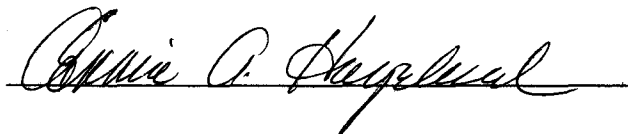
Ruemil Contract Interiors, Inc.  
c/o Jack Miller, Pres.  
55 East 9th Street  
New York, NY 10007

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  
9th day of September, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
RUEMIL CONTRACT INTERIORS, 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 June 1, 1973	:	
through February 28, 1977.	:	

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Petitioner, Ruemil Contract Interiors, Inc., c/o Jack Miller, President, 55 East 9th Street, New York, New York 10007, 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 February 28, 1977 (File No. 23873).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 11, 1983 at 10:30 A.M. Petitioner appeared by its president, Jack Miller. The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

#### ISSUE

Whether petitioner is liable for sales tax on the sale of furnishings in the absence of a resale certificate.

#### FINDINGS OF FACT

1. On June 12, 1978, 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, Ruemil Contract Interiors, Inc., in the amount of \$14,954.91, plus interest of \$4,063.46, for a total due of \$19,018.37 for the

period June 1, 1973 through February 28, 1977.

2. Petitioner, by its sole officer, Jack Miller, had executed consents extending the period of limitation for assessment of sales and use taxes due for the period June 1, 1973 through May 31, 1976 to June 20, 1978.

3. Petitioner was in the business of providing interior furnishings for various institutions. Petitioner would enter into what were described by Jack Miller as "turn-key contracts", whereby petitioner would provide all the necessary furnishings for a building, including kitchen equipment, beds, dressers, office furniture, drapes, carpeting and pictures for the walls. Petitioner generally acted as a "middleman" and, once awarded a contract, subcontracted with others for delivery of the furnishings. The majority of petitioner's sales were to out-of-state, exempt organizations. On June 20, 1980, petitioner filed a petition in bankruptcy and the firm is no longer in business.

4. On audit, the auditor examined all sales contracts for the audit period and determined that, with one exception, all sales had been correctly reported with respect to taxability. The one exception involved a contract for furnishings sold to Devington Furniture Co. ("Devington"), a Florida corporation, and delivered to New Utrecht Nursing Home in Brooklyn, New York. According to correspondence examined by the auditor, petitioner advised Devington that, unless the sale was otherwise exempt, there was sales tax of \$14,936.01 due on the contract. Devington supplied petitioner with an exempt organization certificate from the Little Sisters of the Poor. The auditor explained to Mr. Miller that said document was not sufficient and that a resale certificate was necessary. Devington was not registered with the Sales Tax Bureau and therefore could not issue a resale certificate. Devington remained uncooperative

about registering in New York and supplying such certificate. As a result, the auditor decided to consider the contract taxable and, based on petitioner's correspondence with Devington, determined tax to be due in the amount of \$14,936.01 on the aforesaid contract. An additional \$18.90 was also determined to be due as a result of an error in the sales tax accrual; however, said amount is not at issue herein.

5. Jack Miller testified that one Paul Wallins was the owner of Devington and that for many years Wallins and Miller had done business together. Petitioner had furnished eight different nursing homes for Wallins, who was the builder. The New Utrecht contract was the only job petitioner performed for Wallins operating as Devington. The New Utrecht Nursing Home was built by Wallins to be sold to the Little Sisters of the Poor with petitioner supplying the furnishings. The majority of the contracts between petitioner and Wallins, including the one in issue, were oral and closed with a handshake. Wallins told Miller that no tax was due on the sale of the furnishings because they were going to an exempt organization and that Wallins would supply Miller with an exempt organization certificate from the Little Sisters of the Poor. Miller then purchased the furnishings from various manufacturers and had them drop-shipped to Devington's customer (Little Sisters of the Poor). Since this was the only contract Devington had entered into in New York, the company was not registered with the Department of Taxation and Finance and would not give Miller a resale certificate, despite numerous attempts by petitioner to obtain one.

6. According to the auditor's report, Mr. Miller's testimony and a bill of sale supplied by Mr. Wallins' attorney, the furnishings supplied by petitioner were, in fact, sold and delivered to the Little Sisters of the Poor at the New Utrecht Nursing Home, 1740 84th Street, Brooklyn, New York. Said nursing home

was described in the bill of sale as "a 175 bed healthcare facility". The Audit Division conceded that the only document lacking which would make the aforesaid sale non-taxable was a resale certificate from Devington to petitioner.

CONCLUSIONS OF LAW

A. That where the evidence indicates that at the time of the execution of the contract (a) the contracting parties were aware of the exempt status of the organization, (b) the parties intended to exclude taxes on purchases for the performance of the contract and (c) no sales tax was charged the exempt institution, no sales tax is applicable (Sweet Associates, Inc. v. Gallman, 36 A.D. 2d 95 aff'd, 29 N.Y. 2d 902; Matter of Joseph Davis, Inc., State Tax Commission, December 13, 1978).

B. That section 1132(c) of the Tax Law provides, in part, that all receipts for property or services are subject to tax until the contrary is established, and that the burden of proving that any receipt is not taxable is on the person required to collect tax or the customer. All of the testimony and evidence produced at the hearing showed that the sale of furnishings from petitioner to Devington to the Little Sisters of the Poor was clearly a sale to an exempt organization. Petitioner has met its burden of proof under section 1132(c) of demonstrating that such a sale took place and to disallow the exemption based solely on the absence of a resale certificate would be to emphasize form over substance. Therefore, the sale of the furnishings is deemed to be non-taxable as a sale to an exempt organization.

C. That the petition of Ruemil Contract Interiors, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 12, 1978 is to be modified accordingly.

DATED: Albany, New York

SEP 09 1983

STATE TAX COMMISSION

*Roderick W. Clun*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Miller*  
COMMISSIONER

P 481 208 374

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Ruemil Contract	
Interiors, Inc	
Street and No 10 Jack Miller, Pres	
55 East 9th Street	
P.O., State and ZIP Code	
New York N.Y 10007	
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