

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

May 20, 1983

Tallardy Electric, Inc.
214 Van Wagner Rd., P.O. Box 3326
Poughkeepsie, NY 12603

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: Petitioner's Representative
Lou Lewis
55 Market St.
Poughkeepsie, NY 12601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tallardy Electric, 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 1976 & 1977. :
:

AFFIDAVIT OF MAILING

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 20th day of May, 1983, he served the within notice of Decision by certified mail upon Tallardy Electric, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tallardy Electric, Inc.
214 Van Wagner Rd., P.O. Box 3326
Poughkeepsie, NY 12603

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 May, 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 :
Tallardy Electric, 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 :
Period 1976 & 1977. :
:

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 20th day of May, 1983, he served the within notice of Decision by certified mail upon Lou Lewis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lou Lewis
55 Market St.
Poughkeepsie, NY 12601

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
20th day of May, 1983.

David Parchuck

Charles A. Hapell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
TALLARDY ELECTRIC, 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 Periods 1976 and 1977.

Petitioner, Tallardy Electric, Inc., P.O. Box 3326, 214 Van Wagner Road, Poughkeepsie, New York 12603, 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 periods 1976 and 1977 (File No. 30997).

On December 8, 1982, petitioner advised the State Tax Commission, in writing, that it desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner is entitled to a refund of sales tax paid on materials purchased and used in work performed for a direct payment permit holder.

FINDINGS OF FACT

1. Petitioner, Tallardy Electric, Inc., filed the following Applications for Credit or Refund of State and Local Sales and Use Tax covering the years 1976 and 1977:

<u>Date Received</u>	<u>Claim No.</u>	<u>Refund Claimed</u>
1/12/78	9249	\$ 1,536.74
2/1/78	9476	3,612.85
2/24/78	9858	3,256.94
4/6/78	439	3,221.71
Total		<u>\$11,628.24</u>

Claims numbered 9249 and 9476 were filed on the basis that petitioner paid 7 percent sales tax on materials purchased which were incorporated into real property in a 5 percent taxing jurisdiction. Claims numbered 9858 and 439 were filed on the basis that tax was paid on materials purchased and consumed in capital improvement contracts. These contracts were held with and work was performed for exempt organizations and International Business Machines Corp. ("IBM"), a holder of a direct payment permit.

2. On January 5, 1979, a refund to Tallardy Electric, Inc. was approved in the amount of \$5,852.22 covering the aforesaid refund applications and was computed as follows:

<u>Claim No.</u>	<u>Requested</u>	<u>Denied</u>	<u>Increased</u>	<u>Approved</u>
9249	\$ 1,536.74	\$ 5.97 ¹		\$1,530.77
9476	3,612.85		\$4.41 ¹	3,617.26
9858	3,256.94	2,628.95		627.99
439	3,221.71	3,145.51		76.20
Totals	<u>\$11,628.24</u>	<u>\$5,780.43</u>	<u>\$4.41</u>	<u>\$5,852.22</u>

3. The balance of petitioner's refund applications was denied on the grounds that the work performed for IBM was for capital improvements to real property. It was the Audit Division's position that petitioner was the final owner of the tangible personal property before it was incorporated into the real property of IBM; therefore, it could not accept a direct payment permit for the capital improvement work since the transfer was of real property and not tangible personal property.

¹ Denied and increased due to math errors in applications.

4. Petitioner advised the Audit Division in a letter dated August 4, 1978, that all contracts and work orders performed were for new electrical installations.

5. Petitioner submitted no evidence of any repair contracts with IBM or other evidence to indicate that any sales to IBM were for other than capital improvements to real property.

CONCLUSIONS OF LAW

A. That section 1101(b)(4)(i) of the Tax Law provides that a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land...is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed.

B. That the authority granted a direct payment permit holder under the provisions of section 1132(c) of the Tax Law extends only to the purchase of tangible personal property or services by the permit holder. That petitioner failed to show that the work performed for IBM was not capital improvements to real property. That petitioner therefore properly paid tax to its suppliers on the materials used in the capital improvement work under the provisions of Tax Law § 1101(b)(4). The acceptance of a direct payment permit does not relieve petitioner of its tax liability on its retail purchases. (Matter of A-1 Fence Company, Inc. et al, State Tax Commission, July 3, 1981.)

C. That the petition of Tallardy Electric, Inc. is denied and the refund denial in the amount of \$5,776.02 is sustained.

DATED: Albany, New York

MAY 20 1983

STATE TAX COMMISSION

Rodwin Asch
PRESIDENT

Francis R. Koenig
COMMISSIONER

Walter D. ...
COMMISSIONER

P 481 207 808

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Tallardy Electric Inc.	
Street and No. 1214 Van Wagner Rd.,	
P.O. Box 3326	
P.O., State and ZIP Code	
Poughkeepsie, NY 12603	
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 481 207 809

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Lou Lewis	
Street and No. 55 Market St.	
P.O., State and ZIP Code	
Poughkeepsie, NY 12601	
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