

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Joe Ball Sanitation Service, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 12/1/79 - 8/31/82. :

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of December, 1984, he served the within notice of Decision by certified mail upon Joe Ball Sanitation Service, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joe Ball Sanitation Service, Inc.
4035 Milestrip Rd.
Blasdell, NY 14219

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
14th day of December, 1984.

David Parchuck

James A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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under Article 28 & 29 of the Tax Law for the :
Period 12/1/79 - 8/31/82. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of December, 1984, he served the within notice of Decision by certified mail upon James Kelly, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James Kelly
Williams, Stevens, McCarville & Frizzell
1920 Liberty Bank Bldg.
Buffalo, NY 14202

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
14th day of December, 1984.

David Parchuck

James W. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

December 14, 1984

Joe Ball Sanitation Service, Inc.
4035 Milestrip Rd.
Blasdell, NY 14219

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
James Kelly
Williams, Stevens, McCarville & Frizzell
1920 Liberty Bank Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOE BALL SANITATION SERVICE, 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 December 1, 1979	:	
through August 31, 1982.	:	

Petitioner, Joe Ball Sanitation Service, Inc., 4035 Milestrip Road, Blasdell, New York 14219, 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 December 1, 1979 through August 31, 1982 (File No. 41064).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, General Donovan State Office Building, 125 Main Street, Buffalo, New York, on April 26, 1984 at 2:45 P.M., with all briefs to be submitted by June 14, 1984. Petitioner appeared by Williams, Stevens, McCarville & Frizzell, P.C. (James Kelly, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether a dumping charge, which is separately stated on petitioner's invoices to its customers, is an element of the cost of providing a refuse removal service and thus properly includible in taxable receipts.

FINDINGS OF FACT

1. On March 11, 1983, 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, Joe Ball Sanitation Service, Inc., in the amount of

\$49,801.02 for the period December 1, 1979 through August 31, 1982, plus simple interest.

2. Petitioner is engaged in the business of providing refuse removal services to commercial and residential customers. The tax at issue herein relates only to services rendered to petitioner's commercial customers. Prior to February, 1980, petitioner charged its customers a flat rate plus sales tax. In February, 1980, petitioner began separately stating on its invoices to commercial customers an amount for dumping fees and an amount for hauling the refuse containers. Petitioner collected sales tax on the hauling fee portion of the bill, but not on the dumping fee.

3. Petitioner hauls its customers' refuse to landfills, where a dumping fee is charged based upon the number of (cubic) yards of refuse dumped. It is this dumping charge which petitioner passes along to its customers and which is reflected as a dumping fee on the invoices.

4. The Audit Division asserts that the dumping fees were expenses incurred by petitioner in making sales of refuse removal services and, thus, were properly subject to tax. Petitioner maintains that the dumping fees were not expenses of doing business, but rather that it was acting, more or less, as a conduit for collection of the dumping charge for the landfills. Petitioner argues that if its customers took their own refuse containers to the dump, there would be no tax on the dumping fees.

5. Petitioner's former president, Joseph Ball, Jr., and its former office manager, William Force, explained that the petitioner changed its billing method following a previous sales tax audit during which the auditor orally advised petitioner that if the dumping fees were separately stated on the invoices, such fees would not be subject to tax.

CONCLUSIONS OF LAW

A. That section 1105(c)(5) of the Tax Law provides, inter alia, for a tax on the receipts from sales of the service of maintaining, servicing or repairing real property, property or land. According to 20 NYCRR 527.7(a)(1), such services include trash and garbage removal. Section 1101(b)(3) defines the term "receipt" to include "the charge for any service taxable under this article... without any deduction for expenses...". Under 20 NYCRR 526.5(e), "[a]ll expenses...incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts."

B. That the dumping fee paid by petitioner to the landfills is an expense which is incurred by petitioner in providing its refuse removal service. Such service includes both hauling and disposal of the refuse. While fees for use of a landfill facility are not taxable to the user, such fees, when passed along to customers by the user, become part of the expense incurred by the user and the regulations clearly state that such expenses may not be deducted from receipts regardless of whether or not such expenses are taxable to the direct user. Therefore, the dumping fees were subject to sales tax notwithstanding the fact that such fees were separately stated on petitioner's invoices (Matter of Richard C. Penfold d/b/a C.I.D. Refuse Service, State Tax Comm., May 25, 1984).

C. That the petition of Joe Ball Sanitation Service, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 11, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 14 1984

Rodrica W. Clun
PRESIDENT

Francis R. Koony
COMMISSIONER

Mark J. M.
COMMISSIONER

P 470 316 307

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>James Kelly</i>	
Street and No. <i>William Norton McCusick Blvd</i>	
P.O., State and ZIP Code <i>1920 Liberty Bank Rd</i>	
Postage <i>Buffal NY 14202</i>	
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 470 316 306

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Joe Bell Sanitation Service Inc</i>	
Street and No. <i>4035 Muesbrug Rd</i>	
P.O., State and ZIP Code <i>Blairsville NY 14219</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	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982