

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Mar-Van Hauling & Rigging, Inc. :  
and Mar-Van Crane 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 :  
3/1/75 - 2/28/78. :  
\_\_\_\_\_

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 29th day of February, 1984, he served the within notice of Decision by certified mail upon Mar-Van Hauling & Rigging, Inc. and Mar-Van Crane Service, Inc., the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mar-Van Hauling & Rigging, Inc.  
and Mar-Van Crane Service, Inc.  
P.O. Box 169  
Watervliet, NY 12189

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  
29th day of February, 1984.

David Parchuck

Connel R. Shepard  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 29, 1984

Mar-Van Hauling & Rigging, Inc.  
and Mar-Van Crane Service, Inc.  
P.O. Box 169  
Watervliet, NY 12189

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions  
of  
MAR-VAN HAULING & RIGGING, INC. and  
MAR-VAN CRANE SERVICE, INC.  
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 March 1, 1975  
through February 28, 1978.

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DECISION

Petitioners, Mar-Van Hauling & Rigging, Inc. and Mar-Van Crane Service, Inc., P.O. Box 169, Watervliet, New York 12189, 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 March 1, 1975 through February 28, 1978 (File Nos. 25044 and 25050).

A combined small claims hearing was held before John Watson, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on July 25, 1983 at 9:15 A.M. Petitioners appeared by Alvin Van Denberg, Vice President of Mar-Van Hauling & Rigging, Inc. and President of Mar-Van Crane Service, Inc. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional tax due on the purchase of a 1969 Brockway tractor.

FINDINGS OF FACT

1. Petitioners, Mar-Van Hauling & Rigging, Inc. (hereinafter "Hauling & Rigging") and Mar-Van Crane Service, Inc. (hereinafter "Crane Service") are affiliated corporations.

2. The Audit Division found a total deficiency resulting from an audit of Hauling & Rigging to be \$10,850.24. Hauling & Rigging signed a Consent to Fixing of Tax Not Previously Determined and Assessed agreeing to \$4,917.39 of the deficiency.

On August 7, 1978, Hauling & Rigging was issued two assessments, one for the agreed portion, a Notice and Demand for Payment of Sales and Use Taxes Due in the amount of \$4,917.39, plus penalty of \$369.45 and interest of \$310.37, for a total of \$5,597.21; the other for the disagreed portion, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$5,932.85, plus penalty of \$1,378.68 and interest of \$1,645.86, for a total of \$8,957.39.

Also on August 7, 1978, Crane Service was issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$14,572.57, plus penalty of \$3,542.91 and interest of \$4,462.04, for a total of \$22,577.52.

Petitioner's Hauling & Rigging and Crane Service, had executed consents extending the period of limitation for assessment of sales and use taxes to September 20, 1978.

3. The Audit Division stipulated, with regard to Crane Service, that the tax assessed of \$14,572.57 due was revised to \$125.51 and that amount was agreed to be paid pursuant to a Consent to Fixing of Tax not Previously Determined

and Assessed signed on October 12, 1981 by Mr. James Marshall, vice president of Crane Service. Therefore, there is no dispute regarding the amount of tax owed by Crane Service.

4. The Audit Division further stipulated regarding Hauling & Rigging that the tax assessed by the notice of determination and demand of \$5,932.85 was revised to \$560.00, this amount is in dispute and represents the tax which the Audit Division determined due on a 1969 Brockway tractor.

5. Hauling & Rigging contended that it paid the tax on the 1969 Brockway tractor either to the party from whom they purchased it or directly to the New York State Department of Motor Vehicles ("DMV"). In support of this contention, Hauling & Rigging argued that it could not have registered the Brockway tractor without first proving to the DMV that it paid the tax.

Hauling & Rigging subsequently submitted copies of the following documents relating to the Brockway tractor: Highway Use Tax Permits expiring in 1975 and 1978, a certificate of registration, and a Receipt for the Voluntary Surrender of Registration and Plates.

6. Petitioner at all times acted in good faith.

#### CONCLUSIONS OF LAW

A. That the Highway Use Tax Permits, certificate of registration and the voluntary surrender of registration submitted by Mar-Van Hauling & Rigging, Inc. (Finding of Fact "5") is not sufficient to prove that tax was paid.

B. That the penalty and interest in excess of the minimum prescribed by section 1145(a) of the Tax Law are waived.

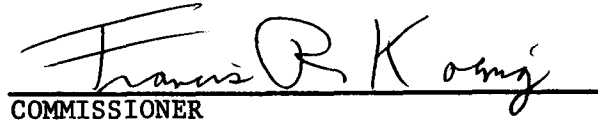
C. That the petitions of Mar-Van Hauling & Rigging and Mar-Van Crane Service, Inc. are granted to the extent indicated in Findings of Fact "3" and "4" and Conclusion of Law "B"; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued August 7, 1978, and that, except as so granted, the petitions are in all other respects denied.

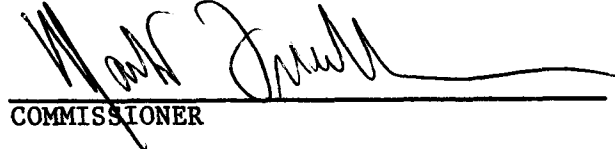
DATED: Albany, New York

STATE TAX COMMISSION

FEB 29 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

PS Form 3800, Feb. 1982

P 470 315 254  
**RECEIPT FOR CERTIFIED MAIL**

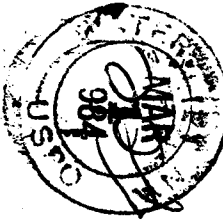
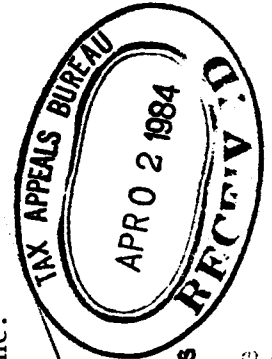
NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Rigging, Inc.</i>	
Street and No. <i>Mr. Van der Ligt</i>	
P.O. Box <i>P.O. Box 169</i>	
P.O., State and ZIP Code <i>Watervliet, NY 12189</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>	\$
Postmark or Date	



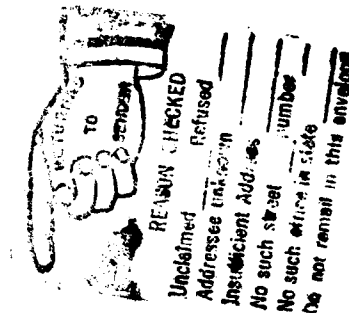
Mar-Van Hauling & Rigging, Inc.  
 and Mar-Van Crane Service, Inc.  
 P.O. Box 169  
 Watervliet, NY 12189



☒ Moved, left no address  
☐ No such number  
☒ Moved, not forwardable  
☐ Addressee unknown

TA 26 (9-79)

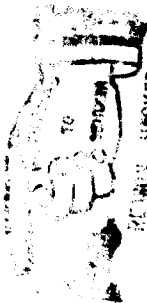
STATE OF NEW YORK  
 State Tax Commission  
 TAX APPEALS BUREAU  
 STATE CAMPUS  
 ALBANY, N.Y. 12227



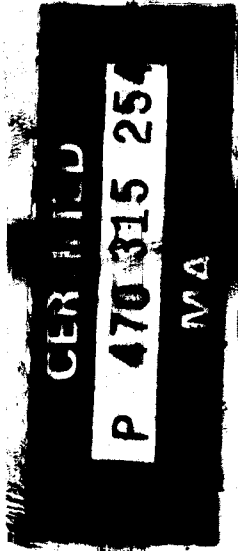
**CERTIFIED**  
 P 470 315 254  
**MAIL**

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



Unclassified  
Addressed to  
Insufficient Address  
No such street  
No such office in state  
Do not re-mail in this envelope



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Mar-Van Hauling & Rigging, Inc.  
and Mar-Van Crane Service, Inc.  
P.O. Box 169  
Watervliet, NY 12189

TAX APPEALS BUREAU  
APR 02 1984  
RECEIVED



☒ Moved, left no address  
☐ No such number  
☒ Moved, not forwarding to  
☐ Please advise us of new address



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

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DATED: Albany, New York

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FEB 29 1984

  
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