PLAINTIFF'S EXHIBIT

MGC-431

RSU-394

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
SALES TAX BOARD
1850 BROOKWOOD STREET
HARRISBURG

IN YOUR REPLY PLEASE REFER TO

In Re Petition of:	:	Board Docket Nos. 2075 and 2076
McGraw Construction Co., Inc. First National Bank Building Middletown, Ohio	:	
		Decision Date: January 14, 1960
REPRESENTATIVE:	:	
Leon D. Metzger, Esquire Hull, Leiby and Metzger Kline Building Harrisburg, Pennsylvania	:	Reassessment
	:	
License No. 99-0546[illegible]		

PROCEDURAL HISTORY

ASSESSMENTS:

Case No. [illegible] and [illegible]05864
Period: 3/7/58 to 9/30/59
Auditors: [illegible] J. Powers
Mr. Stamatakis

Summary:

Tax	$198,474.46
Additions:	49,774.38
Interest:	27,[illegible].62
Total	$275,[illegible]

Assessment Mailed: October 27, 1959
Notice of Intent: December 7, 1959
Petition Filed: [illegible]

HEARING:

Date: January 5, 1960
Place: Harrisburg, Pennsylvania

Present at Hearing:

For Petitioner:
John C. Griffin, Associate Counsel
Leon D. Metzger, Esquire
E. A. Gettman, Jr., Tax Accountant
W. R. Phillips, Jr., Tax Accountant

For the Bureau:

Peter Antanalla
William J. Howenstine

Before:

Horace A. Johnson, Member
Sales Tax Board II

McGCon 2844

REPORT OF THE HEARING EXAMINER

I. [illegible]INGS OF FACT:

1. Petitioner, an Ohio corporation, operating as a construction [illegible]pany, had a construction contract with Armco Steel Corporation, also an [illegible]io corporation. This contract, dated March 25, 1955, provided in part as follows:

> "We agree to construct as directed by Armco Steel Corporation. . .
>
> "I. Service to Be Rendered.
>
> "(1) Subject to the limitations herein contained we [McGraw] propose to act as your [Armco Steel Co.] agents in constructing the work to be performed hereunder and in purchasing material and supplies therefor, subject at all times to such instructions as you may from time to time give us.
>
> "(2) . . .
>
> "We will purchase for your account the necessary machinery, equipment and materials, subject to your approval.
>
> "We will furnish at our own expense
>
> "(a) . . .
>
> "(b) . . .
>
> "(c) The service of the [illegible]urchasing Department in our home office which will assist in the purchase of the machinery, apparatus and materials.
>
> "(d) . . .
>
> "(e) . . .
>
> "(3) . . .
>
> "II. Cost of the Work.
>
> "It is understood that 'Cost of the Work' shall include the following items whether commitments or expenditures are made by you direct or by us for your accounts:
>
> ". . .

"IV. DISBURSEMENTS.

"We will make payment of all items included in the cost of the work defined in Article III from funds to be advanced to us by you for the purpose, giving you each month a detailed statement of expenditures during the previous month, supported by proper vouchers.

"V. PURCHASES AND CONTRACTS.

"You will have as full control as you care to exercise of the purchase of materials and equipment and of the letting of such subcontracts as may seem desirable.

"All contracts and orders placed by us, shall be in your name, with your approval, signed by us as Agents for you. Payrolls shall be paid by us in our name out of moneys advanced by you and deposited in a Control Account."

2. The above contract was audited by the Bureau of Sales and Use Tax and the resulting assessments (A-006438 and H-005864) were based on deficiencies arising from transactions which occurred pursuant to that contract.

3. Armco Steel set up a general working fund at the beginning of the contract in the amount of $25,000.00. This fund was replenished periodically by Armco Steel; it was built up to $225,000.00 in the early part of 1957. This was accomplished as follows: Armco forwarded to McGraw a check in the amount of $25,000.00 payable to McGraw Construction Co., Inc. The home office of McGraw at Middletown, Ohio, then forwarded to the Mellon National Bank and Trust Company, Butler, Pennsylvania, a check in the amount of $25,000.00 (or in whatever amount Armco had advanced to McGraw's home office). This check was payable to:

"McGraw Construction Company, Inc.
Agents for Armco Steel Corporation
Control Account 777
Butler, Pennsylvania."

A letter accompanied the initial $25,000.00 check authorizing the bank to open an account which was to be designated "McGraw Construction Company, Inc., Agents for Armco Steel Corporation, Control Account 777."

4. McGraw drew on Control Account 777 by the use of checks which indicated that McGraw was an Agent for Armco.

5. McGraw did not use any of its funds in operating pursuant to this contract.

6. McGraw's purchase orders requested that the material be shipped to "McGraw Construction Company, Inc., Agents for Armco Steel Corporation". Further, these purchase orders requested that the vendor bill "McGraw Construction Company, Inc., Agents for Armco Steel Corporation." The purchase orders were signed "Armco Steel Corporation, McGraw Construction Company, Inc., Agents."

7. Approval by Armco Steel Corporation was required on all commitments in excess of [illegible]1,000.00. All commitments, except those involving amounts under [illegible]100.00, were to be made only after three bids had been submitted to Armco Steel Corporation for the latter's approval.

8. Armco Steel Corporation had a direct pay permit which was effective during the audit period. McGraw used this direct pay permit in taking those purchases made pursuant to the McGraw-Armco contract.

II. [illegible]

1. [illegible] McGraw Construction Co., Inc., acting as an [illegible] Armco Steel Corporation when it did construction work [illegible] purchased materials and supplies?

2. Is an agent entitled to use a direct pay permit of its principal in making purchases for its principal.

III. CONCLUSIONS OF LAW:

1. McGraw Construction Company, Inc., was an agent for Armco Steel Corporation.

2. A lawful agent acting pursuant to an expressed agency in writing is entitled to use a direct pay permit of its principal in making purchases pursuant to the terms of the expressed agency.

IV. DISCUSSION:

The Findings of Fact are explicit and clearly demonstrate that an agency-principal relationship was established by the contract, and that the Petitioner functioned as an agent in carrying out its obligations under that contract.

Armco Steel Corporation did not assign its direct pay permit to the Petitioner. This it could not do. However, there is nothing in the Sales Tax law, its regulations, or in the general principles of agency which would prohibit Armco from empowering its agents to use the direct pay permit on behalf of Armco.

Such was the case and, thus, the acts of McCraw in purchasing as an agent were in effect the acts of its principal, Armco Steel Corporation. Armco Steel Corporation, pursuant to its direct pay permit, has remitted taxes on these purchases. Whether or not Armco has correctly remitted taxes on these purchases can only be determined by an audit of Armco Steel Corporation.

In accordance with the above, it is hereby **ORDERED** that the assessments against McGraw Construction Company be stricken in their entirety and it is recommended that the Bureau audit Armco Steel Corporation.

Concurred:

Horace A. Johnson

David R. Roche

Gerald H. Goldberg
Chairman