

*State of New York*  
*Supreme Court, Appellate Division*  
*Third Judicial Department*

Decided and Entered: September 22, 2022

533348

---

In the Matter of 608  
FRANKLIN, LLC,

Petitioner,

v

MEMORANDUM AND JUDGMENT

TAX APPEALS TRIBUNAL OF THE  
STATE OF NEW YORK et al.,  
Respondents.

---

Calendar Date: August 18, 2022

Before: Garry, P.J., Lynch, Aarons, Ceresia and Fisher, JJ.

---

Law Offices of Joshua R. Bronstein & Associates, PLLC,  
Port Washington (Joshua Reid Bronstein of counsel), for  
petitioner.

Letitia James, Attorney General, Albany (Dustin J.  
Brockner of counsel), for Commissioner of Taxation and Finance,  
respondent.

---

Aarons, J.

Proceeding pursuant to CPLR article 78 (initiated in this  
Court pursuant to Tax Law § 2016) to review a determination of  
respondent Tax Appeals Tribunal sustaining a sales and use tax  
assessment imposed under Tax Law articles 28 and 29.

Petitioner, a developer, engaged a company to provide  
"guard and protective services" at a construction site, as  
required by local law. In connection with these provided

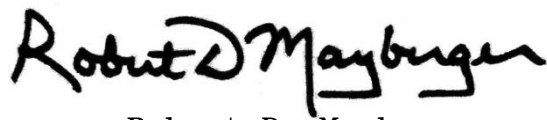
services, the company charged and collected \$9,801.97 in sales tax. Petitioner applied to the Department of Taxation and Finance (hereinafter the Department) for a credit or refund of these taxes paid, arguing that the provided services were excluded from sales tax. The Department denied the application. Petitioner then filed a petition with the Division of Tax Appeals. Following the Department's answer, the parties stipulated that the services provided by the company constituted "[p]rotective and detective services" within the meaning of Tax Law § 1105 (c) (8) and that the only issue for resolution was whether such services were excluded from being taxed because they were provided in conjunction with a capital improvement. Relying on *Matter of Robert Bruce McLane Assoc. v Urbach* (232 AD2d 826 [3d Dept 1996]), an Administrative Law Judge upheld the Department's denial of petitioner's application. Petitioner filed an exception to the Administrative Law Judge's determination, which respondent Tax Appeals Tribunal affirmed. Petitioner thereafter commenced this CPLR article 78 proceeding seeking annulment of the Tribunal's determination.

Petitioner's arguments are similar to those arguments advanced in *Matter of Evergreene Gardens, LLC v Tax Appeals Trib. of the State of N.Y.* (\_\_\_ AD3d \_\_\_ [3d Dept 2022] [decided herewith]). For the reasons stated therein, we confirm.

Garry, P.J., Lynch, Ceresia and Fisher, JJ., concur.

ADJUDGED that the determination is confirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive style with a large, stylized "R" and "M".

Robert D. Mayberger  
Clerk of the Court