

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
OSWEGO VACUUM COOLING CO., 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 June 1, 1979 :
through May 31, 1982. :

Petitioner, Oswego Vacuum Cooling Co., Inc., 300 West 1st Street, Oswego, New York 13126, 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 June 1, 1979 through May 31, 1982 (File No. 41647).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on November 27, 1984 at 1:15 P.M., with all briefs to be submitted by March 1, 1985. Petitioner appeared by Richard C. Mitchell, Jr., Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether certain payments made by petitioner to a related corporation were subject to sales or use tax.

FINDINGS OF FACT

1. Petitioner, Oswego Vacuum Cooling Co., Inc., was engaged in the service of vacuum cooling lettuce. Petitioner shared the business premises with a related corporation, Vacuum Cooling Equipment Co., Inc., (VCE). Each corporation owned equipment that was used in the cooling process. Petitioner

owned the vacuum chamber and air compressor. VCE owned the boiler, steam jet and water pump.

On June 30, 1967, petitioner entered into an agreement with VCE which provided that VCE was to supply petitioner from its portable steam power plant with refrigeration necessary to cool the contents of the trailers and loads on flat-bed trucks placed into the chamber. The term of the agreement was initially for five years; however, said agreement was renewed from time to time and was in effect during the period at issue herein.

2. Farmers packaged lettuce from their fields in crates or cartons which were then put on trucks or in trailers for delivery to petitioner for cooling. Each truck or trailer was taken inside the vacuum cooling chamber, the doors of the trailers were opened and the cooling process was begun. The process involved lowering the atmospheric pressure in the chamber, which in turn lowered the boiling point of the moisture in the lettuce from approximately 80 degrees to 34 degrees. After the cooling process was completed, the vehicle delivered the lettuce to wholesale markets or retail stores, where it was trimmed and wrapped for sale to the consumer. Petitioner did not provide any storage service.

3. Petitioner charged \$.50 per crate for the cooling service. VCE invoiced and received payment of \$.35 per crate from petitioner in accordance with their agreement. The invoice was prepared weekly.

4. On October 20, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period June 1, 1979 through May 31, 1982 for taxes due of \$5,707.98, plus interest of \$1,387.45, for a total of \$7,095.43.

5. On audit, the Audit Division determined that the payments by petitioner to VCE were taxable as the rental of equipment. Total payments for the audit period

of \$142,699.38 were obtained from monthly summaries recorded in the general ledger and the taxes due of \$5,707.98 were computed thereon. Alternatively, the Audit Division argued that VCE was furnishing petitioner with a taxable service under section 1105(b) of the Tax Law.

CONCLUSIONS OF LAW

A. That section 1105(b) of the Tax Law provides for the imposition of sales tax on "(t)he receipts from every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature,...". The agreement between petitioner and VCE specifically provided that VCE agreed to furnish refrigeration necessary for petitioner's cooling process. Accordingly, petitioner purchased a refrigeration service under section 1105(b) of the Tax Law.

B. That, likewise, petitioner was providing a refrigeration service to its customers. Petitioner purchased the refrigeration service from VCE for resale and therefore such purchases are not subject to the tax imposed under section 1105(b) of the Tax Law.

C. That the petition of Oswego Vacuum Cooling Co., Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 20, 1982 is cancelled.

DATED: Albany, New York

NOV 07 1985

STATE TAX COMMISSION

Roderick W. Allen
PRESIDENT

Francis R. Koeng
COMMISSIONER

Mark D. [Signature]
COMMISSIONER