

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

COINMACH INDUSTRIES CORP. :

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 July 1, 1981
through May 31, 1984. :

Petitioner, Coinmach Industries Corp., 55 Lumber Road, Roslyn, New York 11576, 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 July 1, 1981 through May 31, 1984 (File No. 56218).

A hearing was held before Sandra F. Heck, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 12, 1986 at 1:30 P.M., with additional documentary evidence to be submitted by July 14, 1986. Petitioner appeared by Joseph Farber, Esq. The Audit Division appeared by John P. Dugan, Esq. (Michael Infantino, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund of sales tax paid upon gas and electricity used in the operation of a coin-operated laundry facility located in a residential apartment building.

FINDINGS OF FACT

1. On June 19, 1984, petitioner, Coinmach Industries Corp., filed an application for credit or refund of state and local sales or use tax in the amount of \$281.70 for the period July 1, 1978 through May 31, 1984. The basis of the claim was that petitioner had paid sales tax on energy services purchased

solely for residential purposes and that such purchases were exempt from sales tax by virtue of section 1105-A of the Tax Law.

2. On September 4, 1984, the refund claim was denied in full by the Central Sales Tax Section of the Audit Division. The denial was based upon an Advisory Opinion issued by the Technical Services Bureau on April 17, 1984.

The Advisory Opinion stated, in part, that:

"as the gas and electricity at issue is used in the conduct of a trade or business it is not used for residential purposes within the meaning of Section 1105-A of the Tax Law. The receipts from the sale of such gas and electricity are therefore subject to the tax imposed under Section 1105(b) of the Tax Law."

3. Petitioner is engaged in the business of providing coin-operated washing machines and dryers to various residential apartment buildings.

4. The particular refund claim at issue is in regard to the sales tax on electricity and gas supplied to five coin-operated washing machines and four coin-operated dryers in the basement laundry room of a residential apartment building located at 404 East 66th Street in New York City. The 155 tenants who reside in the apartment building are prohibited from maintaining their own washers or dryers in their apartments. The laundry facilities in the building are for the exclusive use of the tenants.

5. Petitioner is responsible for maintaining, servicing and replacing the washers and dryers.

6. Petitioner has its own gas and electric meters installed in the laundry facility and the gas and electric bills are directly rendered to and paid by petitioner. The landlord is responsible for paying for the service of the hot water supplied to the machines.

7. The landlord receives a commission from petitioner based on the usage of the machines. Consequently, when petitioner periodically removes the coins

from the machines, a certain percentage of the proceeds removed is remitted to the landlord.

8. Petitioner paid sales and use tax pursuant to section 1105(b) of the Tax Law for the gas and electricity used to power the washing machines and dryers.

9. Petitioner contends that the Audit Division does not assert tax on gas and electricity used in apartment house laundry rooms where the owner of the building owns and maintains the washing machines and dryers, and that it should not make any difference that petitioner, rather than the landlord, owns and maintains the machines at issue.

CONCLUSIONS OF LAW

A. That section 1105(b) of the Tax Law provides for a sales tax on the receipts from every sale, other than for resale, of gas, electricity and certain other utilities.

B. That section 1105-A(a) of the Tax Law effectively eliminated the New York State sales tax on the sale of natural gas, electricity and certain other utilities "used for residential purposes". (Section 1105-A does not affect the localities' taxes imposed under Article 29 of the Tax Law nor the special taxes imposed by sections 1107 or 1108 of the Tax Law.)

C. That the gas and electricity purchased by petitioner were used by it in the conduct of a trade or business and such use did not constitute a use for residential purposes within the meaning of section 1105-A(a) of the Tax Law.

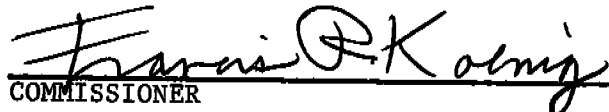
D. That the petition of Coinmach Industries Corp. is denied and the denial of refund dated September 4, 1984 is sustained in full.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER