

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Plattekill Mountain Ski Center, Inc. :
for Redetermination of a Deficiency or for Refund :
of Franchise Tax on Business Corporations under :
Article 9-A of the Tax Law for the Fiscal Years :
Ending May 31, 1976, May 31, 1977 and May 31, 1978. :
_____ :

AFFIDAVIT OF MAILING

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 9th day of March, 1984, he served the within notice of Decision by certified mail upon Plattekill Mountain Ski Center, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

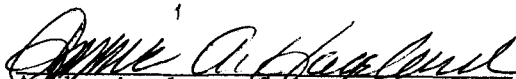
Plattekill Mountain Ski Center, Inc.
Roxbury, NY 12474

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
9th day of March, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

March 9, 1984

Plattekill Mountain Ski Center, Inc.
Roxbury, NY 12474

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) 1090 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: Petitioner's Representative
Joseph C. Capra
Capra Business Consultants, Inc.
P.O. Box C
W. Oneonta, NY 13861
Taxing Bureau's Representative

FINDINGS OF FACT

1. On December 4, 1978, the Audit Division issued to petitioner, Plattekill Mountain Ski Center, Inc., a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, assessing additional sales and use taxes for the period December 1, 1974 through February 28, 1978 in the amount of \$3,904.88, plus penalty and interest, scheduled as follows:

<u>PERIOD ENDING</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2/28/75	\$1,111.75	\$277.93	\$494.28	\$1,883.96
8/31/75	3.21	.80	1.23	5.24
11/30/75	42.55	10.63	15.08	68.26
2/28/76	732.18	183.04	237.66	1,152.88
5/31/76	3.40	.85	1.00	5.25
2/28/77	8.52	2.13	1.74	12.39
8/31/77	7.91	1.50	1.14	10.55
11/30/77	669.44	107.11	76.71	853.26
2/28/78	<u>1,325.92</u>	<u>172.36</u>	<u>112.17</u>	<u>1,610.45</u>
	\$3,904.88	\$756.35	\$941.01	\$5,602.24

Of the various adjustments made to petitioner's sales and use tax returns by the Audit Division, only two of such adjustments remain in dispute and are at issue in the within proceeding: use tax assessed upon petitioner's purchases of snowmaking equipment at a total cost of \$90,587.36 and upon petitioner's purchase of two rescue toboggans at a cost of \$900.00.

Petitioner's president, Gary Hinkley, had executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1974 through February 28, 1978, to and including December 20, 1978.

2. Petitioner owns and operates a ski slope, and sells season and day passes which entitle the holder to use the slope, including all lifts.

3. During the skiing season, petitioner operates its snow machines virtually every day on a 24-hour schedule, first to build the base and thereafter to repair the surface. Petitioner collects water in ponds at the foot of the mountain and pumps it up the slopes via pipelines along the trails. The

snowmaking machine forces water droplets out into the air, where they freeze and fall as snow. Snowmaking is one of the largest operating costs petitioner incurs because of the energy required to run the machines and to pump the water up the slopes. But, as Mr. Hinkley testified at the hearing, "Without [snowmaking] we would have been out of business years ago...".

4. Petitioner maintains that by the use of snowmaking equipment, it has been able to increase its sales, and thus sales tax collected, and increase the size of its workforce, as shown below.

<u>FISCAL YEAR</u> <u>ENDING</u>	<u>SALES TAX</u> <u>COLLECTED</u>	<u>NUMBER OF</u> <u>EMPLOYEES</u>
5/31/74	\$ 145.52	20
5/31/75	440.48	31
5/31/76	678.60	34
5/31/77	1,558.32	44
5/31/78	2,124.00	60
5/31/79	2,090.00	57
5/31/80	1,248.06	71
5/31/81	2,510.15	52
5/31/82	4,355.39	62

5. The rescue toboggans at issue are used exclusively by the ski patrol to transport injured skiers off the mountain. All patrol members are trained in first aid and administer treatment, as necessary, at the scene and/or at the first aid station situated in the lodge. To guide the rescue toboggan with the injured person down the mountain, one patrol member skis in front between the handles of the sled and two ski behind, holding ropes. These sleds are specially constructed, with leg compartments and other features, to safely transport injured persons, including those with serious back injuries. Petitioner charges no fee for the transportation of an injured skier.

CONCLUSIONS OF LAW

A. That subdivision (a) of section 1115 of the Tax Law exempts certain receipts from the tax on retail sales and the compensating use tax, including receipts from the following:

"(3) Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity,...or medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

* * *

"(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property...for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting..."

B. That petitioner is not entitled to the exemption claimed for its snowmaking equipment. Petitioner's patrons paid an admission charge, entitling them to enter upon and use petitioner's slopes (thereby receiving a privilege in the nature of a license. See 17 N.Y. Jur. Easements and Licenses §194 (1961).) In no sense can it be said that the snow was manufactured "for sale" to petitioner's patrons. Accordingly, the equipment failed to satisfy one of the criteria necessary for exemption. Matter of Southern Tier Iron Works v. Tully, 66 A.D.2d 921 (3d Dept.); Matter of Tupper Lake Drive-In Custard Stand, State Tax Comm., July 18, 1980.

C. That the rescue toboggans, which were used for removal of injured skiers from the slopes and which were of no use in the absence of illness or injury, constituted medical equipment qualifying for the exemption of section 1115(a)(3). 20 NYCRR 528.4(e).

D. That petitioner's failure to pay tax upon its purchases of the equipment under consideration was not due to gross negligence or willful intent to disobey the tax laws; penalties in excess of the amount of interest prescribed by statute are therefore remitted. 20 NYCRR 536.1.

E. That the petition of Plattekill Mountain Ski Center, Inc. is granted to the extent indicated in Conclusions of Law "C" and "D"; that the notice of determination and demand issued on December 4, 1978 is to be modified accordingly; and that except as so modified, the assessment is in all other respects sustained.

DATED: Albany, New York

MAR 09 1984

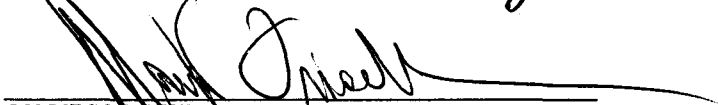
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER