

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CENTRAL OFFICE ALARM CO., INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
August 1, 1965 through August 31, 1970.

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of August, 1976, she served the within Notice of Determination by ~~XXXXXX~~ mail upon Central Office Alarm Co., Inc. (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Central Office Alarm Co., Inc.
37-08 Greenpoint Avenue
Long Island City, New York
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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 (~~representative of~~) ~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

12th day of August, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CENTRAL OFFICE ALARM CO., INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~XX~~ :
August 1, 1965 through August 31, 1970.

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of August, 1976, she served the within Notice of Determination by ~~(XXXXXX)~~ mail upon Emanuel Zimmer, Esq., Louis C. Fieland, Esq. & Jay H. Landau, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Emanuel Zimmer, Louis C. Fieland & Jay H. Landau, Esqs.
Zimmer, Fishbach, Hertan & Haberman
919 Third Avenue
New York, New York 10022
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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 (representative of the) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

12th day of August, 1976

Catherine Steele

Janet Back



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 12, 1976

457-3850
TELEPHONE: (518)

Central Office Alarm Co., Inc.
37-08 Greenpoint Avenue
Long Island City, New York

Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CENTRAL OFFICE ALARM CO., INC.	:	DETERMINATION
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 August 1, 1965 through	:	
August 31, 1970.	:	

Applicant, Central Office Alarm Co., Inc. (hereinafter COAC), 37-08 Greenpoint Avenue, Long Island City, New York, has filed an application for revision of a determination or for refund of sales and use taxes for the period August 1, 1965 through August 31, 1970. A formal hearing was held before Paul B. Coburn, Hearing Officer, on December 19, 1974, at 9:15 a.m. and continued on June 18, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York City. Applicant appeared by Zimmer, Fishbach, Hertan & Haberman, Esqs. (by Emanuel Zimmer, Esq., Louis C. Fieland, Esq., and Jay H. Landau, Esq. of counsel.) The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of counsel).

It was stipulated at the formal hearing that the issue to be determined would be limited to the legal question of the taxability of the central station alarm system which was operated by the applicant, COAC, during the period March 1, 1966 through August 31, 1970 and that after that question has been resolved, the Sales Tax Bureau will conduct an audit to determine the amount that may be due. No sales taxes have been paid.

ISSUES

I. Whether the monthly service charge by applicant, COAC, to its subscribers in connection with a central station alarm system was subject to sales tax.

II. Whether the applicant, COAC, should have collected a sales tax from its subscriber customers with respect to the charge for installation of a central alarm system, where such installation charge was separately stated.

III. Whether a sales tax was payable by the applicant, COAC, on the rentals it paid the New York Telephone Co. on the leased wires which applicant, COAC, used in connection with its alarm services.

IV. Whether the applicant, COAC, was required to pay sales tax on the materials applicant, COAC, purchased to use in making installations of central station alarm systems.

FINDINGS OF FACT

1. Applicant, COAC, was a New York corporation engaged in the business of providing central office alarm services to businesses in the metropolitan New York area from March 1, 1966 until November 1, 1969. On that date it merged into Mutual Central Station Alarm Corporation, and continued the same type of business through August 31, 1970. Applicant has agreed that the determination in this formal hearing shall apply to applicant, COAC, and its successor.

2. Applicant, COAC, installed alarm systems in subscribers' premises which were connected by wires leased from the New York Telephone Co. to applicant, COAC's, central station where alarms on subscribers' individual premises were monitored.

3. During the period in question, when an alarm from a subscriber's premises was noted in applicant, COAC's, central office, a guard was dispatched to the subscriber's place of business, the police were called, and the subscriber was called.

4. During the period in issue, initially applicant, COAC, entered into a written contract by which each subscriber agreed to pay a stated charge for installation on the premises of the subscriber and at the central station of the applicant, COAC, of terminal telephone blocks between which the New York Telephone Co.

ran two telephone wires leased to the applicant, COAC, for the exclusive transmission of alarm signals between the subscriber's premises and the central monitoring station of the applicant, COAC.

5. Next the applicant, COAC, made an installation of an alarm system on the premises of each subscriber. Applicant, COAC, applied foil to glass windows, wired door and window openings, installed electric eye photoelectric space sensors, ultrasonic alarm devices, switches and buttons, and a console controlling these devices throughout the premises of the subscriber in accordance with the degree of protection called for in the contract. Whenever any unauthorized entry or egress was made in the subscriber's premises, the breaking of a circuit triggered an electrical response sent over the leased telephone wires to the monitoring console in the central station of the applicant, COAC, where both a light and a sound would signal the alarm.

6. Applicant, COAC, made a monthly charge to each subscriber for alarm service. No separate charge was made for repairs or maintenance of the installation on the premises of the subscriber. No sales tax was charged on the monthly service charge.

7. The console, switches and other alarm triggering devices installed by applicant, COAC, were easily removable whenever a subscriber's contract for alarm services was terminated.

8. The applicant, COAC, did not pay sales tax on purchases of materials used in making installations of alarm systems on the premises of subscribers. Applicant, COAC, did not charge or collect sales tax on its charges for making installations.

9. The New York Telephone Co. charged a monthly fee to applicant, COAC, for the rental of the leased telephone wires from each subscriber to the central station of the applicant, COAC. No sales tax was charged on the monthly rental of the leased telephone wires.

10. The New York Telephone Co. paid real estate taxes on the leased telephone wires.

11. The New York Telephone Co. did not supply any telephonic or telegraphic services to applicant, COAC, over the leased wires.

12. Applicant, COAC, retained title to the alarm systems it installed, but turned over possession to the subscriber during the term of the contract.

CONCLUSIONS OF LAW

A. That the monthly charge by applicant, COAC, for central alarm service was for guard and protective services, and for the period in issue was not subject to sales and use tax. Holmes Electric Protective Service v. McGoldrick, 262 App. Div. 514, 30 N.Y.S. 2d 589 (1st Dept. 1941) aff'd 288 N.Y. 635 (1942); Opinion of Counsel to Sales Tax Commission, January 31, 1974.

B. That applicant, COAC, transferred the possession of tangible personal property to the subscriber for a consideration in its installation charge for the initial setting up of the alarm system on the premises of the subscriber. That installation charge is subject to a retail sales tax under section 1105(c)(3) of the Tax Law.

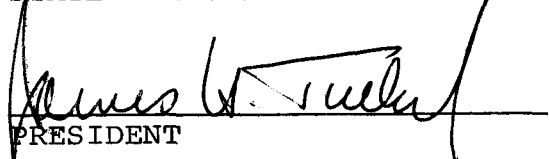
C. That the monthly rental fees paid to the New York Telephone Co. by the applicant, COAC, for the leased telephone wires are not subject to retail sales tax under section 1105(b) of the Tax Law.

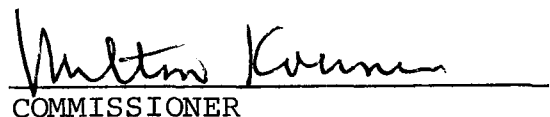
D. That the materials purchased by the applicant, COAC, for use in making an installation of an alarm system on the premises of a subscriber were purchased at retail sale by the applicant, COAC, and were subject to retail sales and use tax under section 1105(a) of the Tax Law.

E. That the case is remanded to the Sales Tax Bureau to conduct an audit to determine the amount that may be due.

DATED: Albany, New York
August 12, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER