

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~
Application :
of :

ALBANY CALCIUM LIGHT CO., INC. :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(XXXXXXXXXX)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use :
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Periods March 1,
1970 through February 28, 1973.

State of New York
County of Albany

JANET MACK , 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 29th day of December , 1975 , she served the within
Notice of ~~Decision (or~~ Determination) by ~~(certified)~~ mail upon Albany Calcium
Light 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: Albany Calcium Light Co., Inc.
260 Osborne Road
Loudonville, New York 12211

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~
~~of)~~ 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

29th day of December , 1975.

Mary Tracy

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~
Application :
of

ALBANY CALCIUM LIGHT CO., INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~CERTIFIED~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use :
Taxes under Article ~~(a)~~ 28 and 29 of the :
Tax Law for the ~~Years~~ Periods March 1, :
1970 through February 28, 1973.

State of New York
County of Albany

JANET MACK , 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 29th day of December , 1975 , she served the within
Notice of ~~Redetermination~~ Determination by ~~certified~~ mail upon Jeremiah F. Manning

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jeremiah F. Manning, Esq.
State Bank Building
75 State Street
Albany, New York 12207
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

29th day of December , 1975

Mary L. Hoff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

DATED: Albany, New York
December 29, 1975

ADDRESS YOUR REPLY TO
Mr. Wright
Mr. Coburn
Mr. Leisner
(518) ~~457-3850~~
457-3850

Albany Calcium Light Co., Inc.
260 Osborne Road
Loudonville, New York 12211

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

Please take further notice that pursuant to
Section(s) **1138 and 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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALBANY CALCIUM LIGHT 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 Periods March 1, 1970	:	
through February 28, 1973.	:	

Applicant, Albany Calcium Light Co., Inc., 260 Osborne Road, Loudonville, New York 12211, has filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods March 1, 1970 through February 28, 1973. (File No. 14-1431111). A formal hearing was held before Edward Rook, Esq., Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 2, 1974, at 2:00 P.M. Applicant appeared by Ainsworth, Sullivan, Tracy and Knauf, (Jeremiah F. Manning, Esq. of counsel). The Sales Tax Bureau was represented by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

ISSUES

I. Whether charges imposed by applicant for the retention of cylinders by its customers after 30 days are subject to New York State and local sales tax?

II. If such charges are subject to New York State sales tax, would the original transaction wherein applicant purchases the cylinders be considered a tax-exempt sale for resale?

FINDINGS OF FACT

1. Applicant, Albany Calcium Light Co., Inc., filed New York State and local sales and use tax returns for the periods from March 1, 1970 through February 28, 1973.

2. On August 17, 1973, as a result of a field audit, the Sales Tax Bureau issued a Notice of Determination and demand against applicant for additional sales tax due for the periods March 1, 1970 through February 28, 1973, in the sum of \$4,370.75 plus penalty and interest of \$1,107.00.

3. Applicant, Albany Calcium Light Co., Inc. was a New York State corporation having its principal place of business at 260 Osborne Road, Loudonville, New York 12211. One of the activities of the company was the distribution and sale of industrial gases.

4. The cylinders in which applicant housed these gases were obtained by Albany Calcium Light Co., Inc. by purchase and by lease. The company paid a sales tax on the cylinders at the time of the purchase or with the lease payment. When a customer purchased gas from the applicant it was delivered in the cylinders. The price of the gas was subject to New York State and local sales tax and the company collected this tax at the time the gas was purchased.

5. At the time that the gas was sold the customers of applicant were given custody of the cylinder for 30 days; at the end of the 30-day period, a penalty charge for each extra day that the cylinder was kept by the customer was levied by applicant (such charge is called a demurrage). Applicant, Albany Calcium Light Co., Inc. did not charge a sales tax on the demurrage.

6. The sales tax on the sale of the gases was not charged to customers who presented exemption certificates to applicant. Forty six percent of Albany Calcium Light Co., Inc.'s penalty charges were to customers who had presented exemption certificates.

CONCLUSIONS OF LAW

A. That the transaction wherein applicant loans the cylinders to its customers for a 30-day period, free of charge and then for everyday thereafter charges them a fixed rate for the cylinder is a sale within the meaning and intent of section 1101(b)(5) of the Tax Law.

B. That the demurrage charges imposed after the 30-day period are subject to New York State and local sales tax in accordance with the meaning and intent of section 1105(a) of the Tax Law.

C. That the purchase or lease of the cylinders by the applicant is not primarily for the purpose of resale. Therefore, that transaction is not a sale for resale and is not tax exempt.

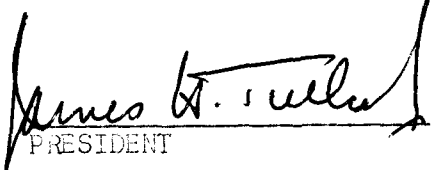
D. That since the original purpose of the purchase of the cylinders by the applicant was not for resale, then the sales tax paid at the time of purchase of the cylinders may not be applied against the assessment imposed by the Sales Tax Bureau.

E. The Notice of Determination and demand is hereby modified to reflect the allowance of the tax exempt certificates on the sales tax imposed on the demurrage charges.

F. The determination as modified is sustained and the application is denied.

DATED: Albany, New York
December 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER