

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ILLINOIS RANGE COMPANY

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period Ending :
February 28, 1971.

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

State of New York
County of Albany

MARY GROFF, 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 22nd day of December, 1975, she served the within
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon MAURICE A. FRANK, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Maurice A. Frank, Esq.
Frank Associates, Ltd.
Suite 3717
One Eighty North LaSalle Street
Chicago, Illinois 60601
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

22nd day of December, 1975.

Just Mack

Mary Groff

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

Handwritten signature/initials

RETURN TO WRITER AS ADDRESSED
NOT DELIVERABLE UNDER
NO FORWARDING ORDER

Maurice A. Frank, Esq.
Frank Associates, Ltd.
Suite 2100

~~One North LaSalle Street~~
Chicago, Illinois 60602

Handwritten:
ATT: *Frederic S. Whipple*
Bldg #9

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~XXXXXXXXXX~~
Application :

of

ILLINOIS RANGE COMPANY :

AFFIDAVIT OF MAILING
OF NOTICE OF ~~REDETERMINATION~~
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 ~~XXXXXX~~ Period Ending :
February 28, 1971.

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 **5th** day of **December** , 19 **75**, she served the within
Notice of ~~XXXXXXXXXX~~ Determination) by ~~XXXXXXXXXX~~ mail upon

ILLINOIS RANGE COMPANY ~~(XXXXXXXXXX)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Illinois Range Company
708 West Central Road
Mount Prospect, Illinois 60058

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~~
~~XXXX~~ 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

5th day of **December** , 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~XXXXXXXXXX~~
Application :

of

ILLINOIS RANGE COMPANY :

AFFIDAVIT OF MAILING
OF NOTICE OF ~~XXXXXXXXXX~~ DETERMINATION
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 ~~XXXXXX~~ Period Ending :
February 28, 1971.

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 **5th** day of **December**, 19 **75**, she served the within
Notice of ~~XXXXXXXXXX~~ Determination) by ~~XXXXXXXXXX~~ mail upon **MAURICE A.**

FRANK, ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Maurice A. Frank, Esq.
Frank Associates, Ltd.
Suite 2100
One North LaSalle Street
Chicago, Illinois 60602

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

5th day of **December**, 19**75**.

Mary Griff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

~~XXXXXXXXXX~~
(518) 457-3850

DATED: Albany, New York
December 5, 1975

Illinois Range Company
708 West Central Road
Mount Prospect, Illinois 60058

Gentlemen:

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,

NIGEL C. WRIGHT
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 :
ILLINOIS RANGE COMPANY :
for a Hearing to Review a Determination :
of Sales and Use Taxes Due or a Denial :
of Credit or Refund of such taxes under :
Articles 28 and 29 of the Tax Law for :
the Period Ending February 28, 1971. :
DETERMINATION

Illinois Range Company, 708 West Central Road, Mount Prospect, Illinois 60058, filed an application for a hearing to review a determination dated March 12, 1974, of sales and use taxes due in the amount of \$1,115.88 plus interest of \$200.86, for a total of \$1,316.74 under Articles 28 and 29 of the Tax Law for the period ending February 28, 1971.

In lieu of a hearing, applicant, Illinois Range Company, submits this case for a determination based on stipulated facts. Applicant is represented by Maurice A. Frank, Esq., of Frank Associates, Ltd., attorneys of Chicago, Illinois.

Such facts have been duly examined and considered.

ISSUES

The issues in this case are: (A) whether the use of certain restaurant equipment in New York solely in the production of a

television commercial is a taxable use in New York and (B) whether said equipment was sold to the user thereof and then repurchased from him or whether it was merely rented to the user thereof.

FINDINGS OF FACT

1. Illinois Range Company is an Illinois corporation whose principal office is located at Mount Prospect, Illinois. Its business is the manufacture of equipment for the preparation and serving of food. It has regularly filed tax returns for sales taxes due to New York State and to a great many of the local sales tax jurisdictions in New York State.

2. At sometime in October, 1970, Joel B. Wells, an equipment buyer for McDonald's Corporation with offices in Chicago, Illinois, telephoned Charles W. Marshall, the Vice-President of Illinois Range Company in Mount Prospect, Illinois, and requested the loan of certain restaurant equipment for use in making a television commercial in New York City. It was agreed that this equipment would be furnished at no cost except for out-of-pocket expenses such as transportation incurred by Illinois Range Company.

3. On October 16, 1970, the equipment in question was shipped from Mount Prospect, Illinois, to Director's Center, 510 West 57th Street, New York City.

4. The equipment was returned to Mount Prospect, Illinois, between November 9 and 12, 1970, by a common carrier for a charge of \$585.00.

5. A billing was made (No. 27824) on October 28, 1970, for the equipment in question. This was sent from Mount Prospect, Illinois, to the Chicago offices of McDonald's. It specified about twenty items and gave individual prices totaling \$18,552.00 computed a New York sales tax thereon, inadvertantly at 5%, and added freight charges of \$46.01 for a total of \$19,525.61. It stated that installation charges would follow.

6. A second billing (No. 28303) was made on December 30, 1970, for an additional 1% sales tax in the amount of \$188.28.

7. On December 31, 1970, Illinois Range Company issued a credit memo to McDonald's. This identified the equipment as returned from Director's Center and stated that the credit was to cancel the previous two invoices.

8. A further billing was made on December 31, 1970, (No. 28316) for "the expenses of shipping, installation and refurbishing" the equipment here in question. This amounted to \$3,267.97 and included charges for freight of \$1,364.00 installation men's expenses of \$702.60, repairs to equipment of \$464.91, installation men's time of \$675.00 and Martin-Brower invoices \$61.46. It included no sales tax.

9. Illinois Range Company included in its New York sales tax returns the amount of tax billed but not collected from McDonald's. Later a credit was granted by the Sales Tax Bureau

for such amount without prejudice to any rights under the Notice of Determination here in issue. Said Notice of Determination computes a tax on the sales price of the equipment as originally billed by the applicant.

CONCLUSIONS OF LAW

A. The equipment here in question was used in New York for the purpose for which the user thereof intended. The delivery of the equipment in New York is taxable.

B. It is clear that the transaction here in question was never intended by the parties to be a sale and then a repossession. It was as applicant asserts a mere rental. As a rental the taxable receipt computed under section 1101(b)(3) of the Tax Law amounts to \$3,267.97 less the separately stated freight charge of \$1,364.00 for a net amount of \$1,903.97. The sales tax due thereon at 6% is \$114.84.

The determination of tax under review is found to be erroneous in part and is redetermined to be \$114.84 together with interest at 6% under section 1145 of the Tax Law.

DATED: Albany, New York
December 5, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER