

BUREAU OF LAW

MEMORANDUM

*Sales Tax Determinations**A-2**Hygienic Phone Service, Inc.*

TO: Commissioners Murphy and Macduff

FROM: Martin Schapiro, Hearing Officer

SUBJECT: Formal Hearing
Hygienic Phone Service, Inc.
Article 28 - Sales Tax
Period: August 1 - 31, 1965

The issue raised herein is whether or not the services of cleaning, polishing and sterilizing of telephones are interior cleaning and maintenance services exempt from the sales tax under section 1105(5) of the Tax Law.

The facts herein are as follows: The taxpayer corporation is in the business of polishing, cleaning and sterilizing of telephones and intercommunication systems of its clients which consist of business organizations located primarily in the City of New York. The services are performed on a regular contractual basis pursuant to a written agreement for a period of one year, but in rare instances for a period of three months. Depending upon the terms of the contract, the services are rendered to the clients weekly, biweekly or monthly and consist in all cases first of cleaning, then of polishing such equipment, and finally of sterilizing the mouthpieces by means of a germicidal solution. No differentiation is made between telephones and private intercommunication systems. The employees of the taxpayer who perform such services require no special training or skill, and such services can be performed by anyone. The time taken to perform the service is approximately one or two minutes on each telephone.

The question, therefore, to be determined is whether or not the taxpayer's activities constitute the maintenance or servicing of personal or real property taxable pursuant to the provisions of section 1105, subdivision 3 or 5 thereof, or whether such activities are excluded from the tax as being interior cleaning and maintenance service within the intent and meaning of subdivision 5 of section 1105 of the Tax Law. In an opinion of counsel dated August 30, 1965 (Op. Counsel 1965 N.Y.T.B. - V.1, Pages 29, 30.) it was held that janitorial services which include dusting, cleaning and waxing desks, chairs and other office furniture, were interior cleaning and maintenance services exempt from taxation under the aforesaid section. Office furniture would ordinarily compass the telephones since it could not be realistically held that janitorial services are limited to the cleaning and polishing of desks on which the telephones stand and not the telephones themselves. There is nothing in the nature of the services of cleaning and polishing telephones which

are performed by relatively unskilled persons to differentiate it from other janitorial duties. The additional item of sterilization is not, I believe, sufficiently distinguishable to make such services taxable. I am, therefore, of the opinion that the taxpayer's services are the services of interior cleaning and maintenance performed on a regular contractual basis for a term of not less than thirty days and thus exempt from taxation under the provisions of section 1105, subdivision 5, of the Tax Law. Accordingly, I have prepared a proposed determination cancelling the assessment. If you agree, kindly sign the same and return the file to the Law Bureau for further disposition.

/s/

MARTIN SCHAPIRO

Hearing Officer

November 16, 1966

MS:cp¹⁴ (Dec. 13, 1966)

Enc.

**STATE OF NEW YORK
STATE TAX COMMISSION**

**IN THE MATTER OF THE APPLICATION OF
HYGIENIC PHONE SERVICE, INC.**

**FOR A HEARING TO REVIEW A DETERMINATION
ASSESSING SALES OR USE TAX PAID PURSUANT
TO THE PROVISIONS OF ARTICLES 28 AND 29
OF THE TAX LAW FOR THE PERIOD COMMENCED
AUGUST 1, 1965 AND ENDED AUGUST 31, 1965**

The applicant, Hygienic Phone Service, Inc., having duly filed an application for a hearing to review a determination determining sales tax pursuant to Articles 28 and 29 of the Tax Law for the period commenced August 1, 1965 and ended August 31, 1965, and a hearing thereon having been held at the office of the State Tax Commission, at the State Office Building, 80 Centre Street, New York, New York before Martin Schapiro, Hearing Officer, at which hearing the taxpayer appeared by its attorney, Polikoff & Clarenson, Esqs., and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That on May 4, 1966 a notice of determination was issued determining sales taxes due for the aforesaid period in the amount of \$278.61 (notice # 90,700,257).

(2) That the taxpayer corporation is in the business of polishing, cleaning and sterilizing of telephones and inter-communication systems of its clients which consist of business organizations located primarily in the City of New York.

The services are performed on a regular contractual basis pursuant

to a written agreement for a period of one year, but in rare instances for a period of three months. Depending upon the terms of the contract, the services are rendered to the clients weekly, biweekly or monthly and consist in all cases first of cleaning, then of polishing such equipment, and finally of sterilizing the mouthpieces by means of a germicidal solution. No differentiation is made between telephones and private intercommunication systems. The employees of the taxpayer who perform such services require no special training or skill, and such services can be performed by anyone. The time taken to perform the service is approximately one or two minutes on each telephone.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the services performed by the taxpayer are interior cleaning and maintenance services exempt from taxation in accordance with the provisions of section 1105, subdivision 5, of the Tax Law.

(B) That accordingly the determination of the State Tax Commission (notice # 90,700,257) is vacated and set aside.

Dated: Albany, New York, on the 27th day of December , 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER