

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBANY-EDISON OXYGEN CO INC.

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 ~~(Years)~~ Periods
3/1/71 through 2/28/74.

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

State of New York
County of Albany

Margaret A. Groelz , 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 April , 19 76, she served the within
Notice of ~~Decision~~ (~~or~~ Determination) by (~~certified~~) mail upon Albany-
Edison Oxygen 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-Edison Oxygen Co., Inc.
2005 Central Avenue
Albany, New York 12205

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 April , 1976.

Janet Trach

Margaret A Groelz

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of April, 1976, she served the within
Notice of ~~Decision~~ (~~or~~ Determination) by ~~(CERTIFIED)~~ mail upon Russel L.

McGrath & James R. DiSanto (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Russell L. McGrath & James R. DiSanto, CPA's
c/o Tate, DiSanto, Miller and Rothstein
1698 Central Avenue
Albany, New York 12205
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 April, 1976

James R. DiSanto

Margaret A. Groelz



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518

STATE TAX COMMISSION

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
April 29, 1976

Albany-Edison Oxygen Co. Inc.
2005 Central Avenue
Albany, New York 12205

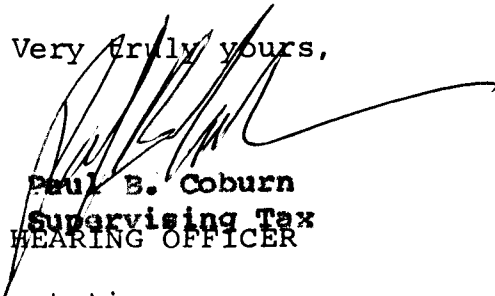
Gentlemen:

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,


Paul B. Coburn
Supervising Tax
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALBANY-EDISON OXYGEN 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, 1971 through	:	
February 28, 1974.	:	

Applicant, Albany-Edison Oxygen Co., Inc., 2005 Central Avenue, Albany, New York 12205, 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 period of March 1, 1971 through February 28, 1974. (Notice No. 90753714). A formal hearing was held before L. Robert Leisner, Esq., Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on April 29, 1975, at 9:30 A.M. Applicant appeared by Tate, DiSanto, Miller and Rothstein, C.P.A.'s (by Russell L. McGrath and James R. DiSanto). The Sales Tax Bureau was represented by Saul Heckelman, Esq. (James A. Scott, Esq., of counsel).

ISSUES

I. Whether applicant, Albany-Edison Oxygen Co., Inc., is responsible for New York State and local sales taxes on purchases of cylinders from an out-of-state vendor who has failed to collect said taxes from applicant.

II. Whether charges imposed by applicant, Albany-Edison Oxygen Co., Inc. for the retention of cylinders by its customers after thirty days are subject to New York State and local sales tax.

FINDINGS OF FACT

1. Applicant, Albany-Edison Oxygen Co., Inc., filed New York State and local sales and use tax returns for the periods March 1, 1971 through February 28, 1974.

2. On December 19, 1974, as a result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period March 1, 1971 to February 28, 1974, in the sum of \$9,292.37 plus penalty and interest in the sum of \$2,243.82 for a total sum of \$11,536.19.

3. Applicant, Albany-Edison Oxygen Co., Inc. was a New York State corporation having its principal place of business at 2005 Central Avenue, Albany, New York 12205. One of the activities of the company was the distribution and sale of industrial and medical gases.

4. The cylinders in which applicant, Albany-Edison Oxygen Co., Inc., housed these gases were purchased from Chemetron Corporation of Philadelphia, Pennsylvania. Some of the sales invoices omitted New York State and Albany County local sales tax while other invoices omitted the Albany County local sales tax. The sales invoices were paid as billed.

5. Applicant, Albany-Edison Oxygen Co., Inc., on delivery of the cylinders to its customers would charge and collect New York State and local sales tax for the gas purchased by said customers. The customers were given custody of the cylinders for thirty days. At the end of the 30 day period, a charge for each day that the cylinder was kept by the customer beyond the 30 day period was levied. Such charge in the industry was called demurrage. A sales tax was not charged on the demurrage.

6. Applicant, Albany-Edison Oxygen Co., Inc. has offered no proof regarding the allegation that the statute of limitations applied to part of the period in issue or that the tax paid on some invoices was not properly credited.

CONCLUSIONS OF LAW

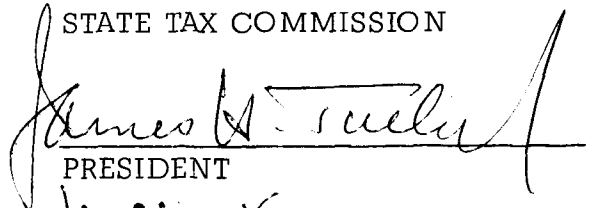
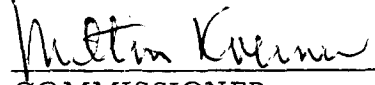
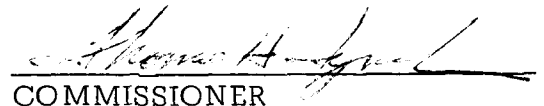
A. That applicant, Albany-Edison Oxygen, Inc., as a customer, is obligated for the payment of New York State and local sales taxes whenever the person required to collect the same has failed to do so within the meaning and intent of section 1133(b) of the Tax Law.

B. That the transaction wherein applicant, Albany-Edison Oxygen, Inc., loans the cylinders to its customers for a 30 day period, free of charge and for every day 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.

C. 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.

D. The Notice of Determination and Demand for Payment of Sales and Use Taxes Due is sustained and the application of Albany-Edison Oxygen, Inc., is denied.

DATED: Albany, New York
April 29, 1976

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER