

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HIGHLAND TELEPHONE COMPANY

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 ~~Year(s)~~ Period(s) :
August 1, 1965 through August 31, 1969

State of New York
County of Albany

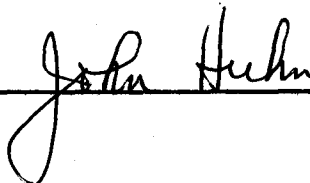
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of September, 1978, she served the within
Notice of Determination by ~~(certified)~~ mail upon Highland
Telephone Company
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Highland Telephone Company
145 North Main St.
Monroe, NY 10950
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

13 day of September, 1978.





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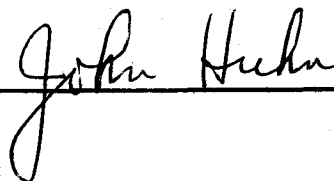
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of September, 1978, she served the within
Notice of Determination by ~~(certified)~~ mail upon Williams, Micale &
Ryan
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Williams, Micale & Ryan
Mony Plaza
100 Madison Street
Syracuse, NY 13202
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

13 day of September, 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
September 13, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Highland Telephone Company
145 North Main St.
Monroe, NY 10950

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1140** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Michael Alexander
Michael Alexander
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

HIGHLAND TELEPHONE COMPANY

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, 1969.

Applicant, Highland Telephone Company, 145 North Main Street,
Monroe, New York 10950, filed an application for a revision of a
determination or for refund of sales and use taxes due under
Articles 28 and 29 of the Tax Law for the period August 1, 1965
through August 31, 1969. (File No. 01664)

A formal hearing was held before Nigel G. Wright, Hearing
Officer, at the offices of the State Tax Commission, Building #9,
State Office Building Campus, Albany, New York, on October 15,
1974 at 2 p.m. and continued on October 14, 1976 at 10 a.m. before
Michael Alexander, Hearing Officer.

The applicant appeared by Williams, Micale & Ryan (Frank J.
Micale, Esq. of counsel) at the first session and by Nixon,
Hargrave, Devans & Doyle (Justin E. Doyle, Esq. of counsel) at

the continued hearing. The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Alexander, Weiss, Esq. of counsel).

ISSUES

I. Whether applicant is liable for a compensating use tax under section 1110 of the Tax Law on certain intrastate toll telephone services provided free of charge by a telephone company for its "own official use" and for the use of retirees.

II. Whether applicant is liable for a use tax under section 1110 of the Tax Law on the purchases of certain equipment used in testing the quality of transmission and in inspecting, maintaining and installing equipment of the telephone company.

FINDINGS OF FACT

1. Applicant timely filed New York State sales and use tax returns for the period from August 1, 1965 to August 31, 1969.

2. On June 15, 1970, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to applicant, Highland Telephone Company, for the period August 1, 1965 to August 31, 1969. It assessed additional use tax for that period of \$5,893.28, plus penalty and interest of \$2,038.65, for a total amount due of \$7,931.93.

3. On July 17, 1970, Highland Telephone Company made payment, under protest, of the \$7,931.93.

4. Applicant contests only the use tax assessments made based on "intrastate toll charges" and purchases of equipment utilized by applicant in testing its equipment. Such equipment is included in the "plant capital and maintenance account items" on the notice and is termed "central office equipment" by applicant.

5. Applicant, Highland Telephone Company, has its business office in Monroe, New York, approximately 45 miles north of New York City. It serves an area in Orange and Ulster Counties of about 330 square miles.

6. Applicant's revenues are from flat, monthly charges to subscribers for basic telephone service within the local calling area, and from toll charges to such customers for telephone calls to points outside the local calling area.

7. Telephone service is provided free of charge by applicant, Highland Telephone Company, to its own officials for business purposes, to its staff on calls from the central office when testing subscribers' equipment, and to certain retired employees (subject to some limitations) from their home telephones.

8. Where calls described in Finding of Fact "7" above are made within the local calling area, no record is made of each call and apparently no bill is sent covering the calling

telephone. Where such calls are made to points outside the local calling area (toll calls), then the central exchange equipment would record such calls and a bill would be prepared. Such bills are marked "memo bill" and no payments of the bills are expected or made.

9. The recorded business toll calls are bookkeeping entries in both a revenue account and an expense account. The recorded revenue and expense are thus offsetting, but are still incorporated into the figures shown for operating income and operating expense on the company's annual statement. This accounting procedure is optional and is not required by the Public Service Commission.

10. The memo billing used by Highland is mainly for the purposes of enabling the official user to know what calls have been made and thus to detect unauthorized use of the telephone.

11. Applicant, Highland Telephone Company, periodically settles accounts with other telephone companies for toll calls made to and from points outside its own calling area. During the period in question, settlement was made on the basis of extensive cost studies. For purposes of settling accounts for toll calls, only revenues were considered and thus official calls (from which no revenue resulted) were not the subject of settlement.

12. Applicant, Highland Telephone Company, has ten buildings with telephone equipment which are designated central offices. In these central offices, applicant utilizes various forms of test equipment to insure proper transmission quality and to inspect and maintain the operation of its system to assure the rendition of safe, adequate and continuous service. Such testing is required by the New York State Public Service Commission.

13. The testing equipment is, for accounting purposes, treated as central office equipment pursuant to the regulations of the Public Service Commission and is depreciated over a 25 year period.

14. Applicant, Highland Telephone Company, has paid real property tax on the central office testing equipment used by applicant in its central offices.

15. The auditor for the Sales Tax Bureau computed the use tax due on plant capital and maintenance account items by auditing the three month period ending August 31, 1969. All purchases treated by applicant as exempt purchases which were disallowed by the auditor, were divided by the total accounts payable for that quarter. The disallowed purchases consisted primarily of purchases of test equipment. The resultant decimal or percentage was then multiplied by the total accounts payable for every other

quarter during the period in question so as to arrive at taxable sales for such periods, and the tax due was computed thereon. No allowance for the useful life of test equipment was considered by the auditor. The auditor, using this method, arrived at a figure of \$203,251.00 of disallowed purchases (treated as exempt purchases by applicant) for the period in question.

16. The test equipment involved in the test quarter used by the auditor consisted of four types of equipment:

(a) Model TTS Loop Around Test systems are installed permanently in a central office and are used on a daily basis as a normal part of operations, to insure proper transmission quality by receiving test calls and gauging the quality of the transmission. This function can be performed in an instant. A test call would be placed to this piece of equipment as the destination of that call, and the quality of the transmission would then be measured.

(b) The TTS 4ANH Transmission Test Set and the TTS 4DV Variable Frequency Adaptor Cover are used as a unit in central offices to test the quality of transmission, and are specifically used when installing or repairing circuits to assure that the transmission is at the proper noise and decibel level for subscriber reception of messages. This equipment is portable and can be moved from one central office to another.

(c) The Alston electronic scanning device is a portable piece of equipment and is used in central offices to measure the usage of central office equipment. It also indicates that certain equipment is not functioning.

(d) Hand test sets are portable pieces of central office equipment similar in appearance to the receiver of a telephone and are used to plug into any piece of equipment. The "switchman" can then dial into that equipment for testing purposes to see where repair is necessary.

The number of pieces purchased and the cost of these pieces of equipment in the quarter ending August 31, 1969 were:

- (a) Three pieces at \$1,110.00 each,
- (b) One piece at \$893.00,
- (c) Four pieces at \$2,332.00 each, and
- (d) Twelve pieces at \$12.00 each.

17. During the entire period in question, \$34,985.32 of these four types of test equipment were purchased by applicant, Highland Telephone Company. No testimony or other documentary evidence was submitted regarding the purchase of test equipment other than the four pieces mentioned in Finding of Fact "16", above, during the period in question herein.

18. The sales tax returns of applicant, Highland Telephone Company, were prepared in good faith and upon advice of its accountants.

CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law imposes a use tax for use within New York of property or services in four instances where a sales tax has not been imposed or will not be imposed.

B. That no provision is made in section 1110 for application of the use tax on the receipts from telephone service on which a sales tax is imposed by section 1105(b) and that applicant, Highland Telephone Company, is thus not liable for use tax on intra-state toll calls made free of charge as test calls, calls made by employees or retirees or calls made by officials for business purposes.

C. That section 1115(a)(12) of the Tax Law exempts telephone central office equipment or station apparatus for use directly and "exclusively" (statute read "exclusively" during taxable period in question) in receiving at destination or initiating and switching telephone communication.

D. That the equipment purchased by applicant, Highland Telephone Company, listed in Finding of Fact "16" above, constitutes central office equipment. However, such equipment, though

necessary to insure proper transmission quality and to test central office equipment pursuant to required maintenance services and procedures, is not required to carry a message to its destination or to initiate or switch such a message, and is thus not used either directly or exclusively in those statutorily specified steps of telephone communication to qualify such equipment purchases for the exemption provided in section 1115(a)(12).

E. That, although the audit method used by the Sales Tax Bureau in computing the use tax due by applicant, Highland Telephone Company, on the purchase of central office testing equipment, did not take into account the useful life of such equipment and the possible effect thereof on the purchase of test equipment during the entire period in question, no substantial evidence is provided by applicant to indicate that the amount of all test equipment purchased for the taxable period in question is other than that contained in the assessment.

F. That the burden of overcoming a tax assessment rests, in most cases, with the taxpayer, as it does herein, and that as regards the assessment of use tax on the purchase of test equipment, the record herein contains no substantial basis for redetermining the computation of the use tax made on such payment.

G. That the application of Highland Telephone Company is granted to the extent that the use tax assessed on all intra-state toll calls is cancelled, together with such interest and penalty assessed; that the Sales Tax Bureau is hereby directed to refund use tax, penalty and interest paid on the intrastate toll calls together with such interest as may be lawfully owing; and that the application of Highland Telephone Company is also granted to the extent that the interest in excess of minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law are waived; and, that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER