

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~year(s) xxx~~ Period ~~(x)~~
June 1, 1973 to May 31, 1974.

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1979, he served the within
Notice of Determination by ~~(certified)~~ mail upon Consolidated Edison Co. of
New York, Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:
Consolidated Edison Co. of New York, Inc.
4 Irving Place
New York, NY 10003

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)~~
~~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

14th day of February, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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of

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

For a Redetermination of a Deficiency or
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Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~XXXXXX~~ Period(~~s~~)
June 1, 1973 to May 31, 1974.

AFFIDAVIT OF MAILING

State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1979, she served the within
Notice of Determination by ~~(certified)~~ mail upon James L. Michalak, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

James L. Michalak, Esq.
4 Irving Place
New York, NY 10003

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.

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Sworn to before me this

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Maurice J. Papineau

John Huhn

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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February, 1979, she served the within
Notice of Determination by ~~(represented)~~ mail upon James F. McMahon, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

James F. McMahon, Esq.
4 Irving Place
New York, NY 10003

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.

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Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
June 1, 1973 to May 31, 1974.

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 14th day of February, 1979, she served the within
Notice of Determination by ~~certified~~ mail upon William B. Morris, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
William B. Morris, Esq.
4 Irving Place
New York, NY 10003

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

14th day of February, 1979.

Marilyn J. Papineau

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

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

February 14, 1979

Consolidated Edison Co. of New York, Inc.
4 Irving Place
New York, NY 10003

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 & 1243** 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 TAX COMMISSION

In the Matter of the Application :
of :
CONSOLIDATED EDISON CO. OF NEW YORK, 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 Period :
June 1, 1973 to May 31, 1974. :
:

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 24, 1977 at 1:15 P.M. Applicant appeared by James L. Michalak, James F. McMahon, and William B. Morris, Esqs. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

Whether applicant, which changed its method of reporting sales tax, could take credit for the sales tax paid on inventory beyond the three-year period as provided in section 1139(a) of the Tax Law.

1. On May 12, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Tax Due against applicant, Consolidated Edison Co. of New York, Inc., for the periods in issue in the amount of \$437,144.00, plus penalty and interest of \$129,108.30, for a total due of \$566,252.30.

2. Applicant, Consolidated Edison Co. of New York, Inc., is a public utility corporation and holder of a direct payment permit, which permit allowed the company to pay tax directly to the State and not to the vendor. Applicant determined the status of items during that quarter in which the items were purchased. Sales tax was therefore, prepaid on inventory. Consolidated Edison Co. of New York, Inc. desired to convert their accounting system so that sales tax would be paid only when the items were removed from inventory, at which time determination of the use and of the taxable status would be made.

3. On April 12, 1973, pursuant to a meeting held with the Sales Tax Bureau, applicant submitted the following proposals:

- (a) with regard to inventory items purchased under a direct payment permit, a determination of taxable status will be made on the date on which the property is used.
- (b) detailed records of inventory purchases will be kept and reconciled with the inventory amounts used in the company's federal tax return.
- (c) the applicable tax on any inventory differences which have not been accounted for will be included on the quarterly sales and use tax return in which the taxable year of the corporation ends, i.e. Dec. 31, 1973. Applicant, Consolidated Edison Co. of New York, Inc., was prepared to up-date inventory figures and to adjust the December 31, 1972 figure to reflect the actual sales tax paid on inventory as of May 31, 1973. To effect the revised system of reporting and taking into consideration prior sales tax paid on its present inventory, applicant proposed to take as a credit a proportionate amount of prior-paid tax on quarterly sales tax returns filed on June 20, 1973,

September 20, 1973, December 20, 1973 and March 20, 1974. The June 20, 1974 credit would be adjusted to conform with tax estimated on the May 31, 1973 inventory. Lastly Consolidated Edison Co. of New York, Inc. would apply and pay the actual sales rate in effect at the time the item is removed from inventory.

4. On May 9, 1973, the Sales Tax Bureau reviewed both the proposal of April 12, 1973 and the schedules submitted. The methods and procedures used to analyze current inventory and to compute the tax paid on inventory were found to be acceptable. While accepting the method of inventory analysis to determine the amount of tax paid on current inventory, such acceptance would not constitute approval of the dollar amount of tax credit, which would be approved through field audit verification procedures deemed appropriate within the three-year statute of limitations.

5. Applicant, Consolidated Edison Co. of New York, Inc., timely filed sales tax returns for the periods in issue and took a credit of \$959,284.00 in each of the periods. These credits were denied, in part, by the Sales Tax Bureau in the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 12, 1975. These credits represented that inventory on which taxes were paid on items purchased between August 1, 1965 and May 31, 1973. The credit claimed represented the actual tax rate in effect at the time of purchase. Applicant, however, paid the higher applicable tax rate in effect on items taken out of inventory that were deemed subject to tax.

6. Applicant, Consolidated Edison Co. of New York, Inc., acted in good faith and cooperated with the Sales Tax Bureau.

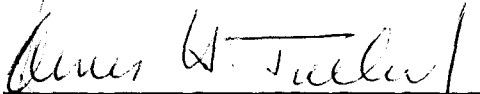
CONCLUSIONS OF LAW

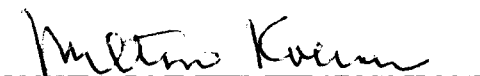
A. That the credits taken by applicant, Consolidated Edison Co. of New York, Inc., for the periods August 1, 1965 to May 31, 1970, were not within the three-year period, in accordance with the meaning and intent of section 1139(a) of the Tax Law.

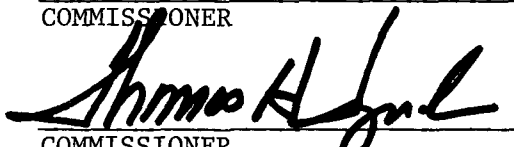
B. That the application of Consolidated Edison Co. of New York, Inc. is granted to the extent that interest in excess of minimum interest, and the penalty imposed pursuant to section 1145(a) of the Tax Law are waived; that the Sales Tax Bureau is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 12, 1975 and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

Consolidated Edison Co.
of New York, Inc.

APPROVAL OF CREDITS
AND ~~RECORDS~~ REF

☐ DELETE

ADJUSTED/
CORRECTED

☐ OLD
☐ NEW

IDENTIFICATION NO.

1 3 - 5 0 0 9 3 4 0

OR ☐ "NONFILERREF" -

SCREEN 18, SECT. XII

NAME AND ADDRESS OF VENDOR

Consolidated Edison Company of New York, Inc.
4 Irving Place Room 200
New York, New York 10003

DATE OF CLAIM

03-17-78

☒ Interest

☐ No Interest

DATE OF REFUND

TOTAL AMT. OF CHECK

PERIOD ENDED	PERIOD DESIGNATOR	OVERPAYMENT (+) OR UNDERPAYMENT (-)	INTEREST FROM	INTEREST (+) (-)	DISTRIBUTION	
					LOCATION CODE	\$ AMOUNT OF TAX
1 8/31/73	174	64,343.01	9/20/73	-	8002	123,538.56
2 2/28/74	374	72,064.17	3/20/74	-	0002	624,556.16
3 5/31/74	474	34,708.63	6/20/74	-	5802	45,001.32
4 8/31/74	175	93,511.84	9/20/74	-	5810	122,895.15
5 2/28/75	375	93,511.84	3/20/75	-	9999	3,219.34
6 8/31/75	176	93,511.84	9/20/75	-		
7 2/29/76	376	93,511.84	3/20/76	-		
8 6/30/76	0177	93,511.84	9/20/76	-		
9 12/31/76	0777	93,511.84	3/20/77	-		
10 6/30/77	0178	93,511.84	9/20/77	-		
11 12/31/77	0778	93,511.84	3/20/78	-		
12				-		
13				-		
14				-		
15 TOTALS		\$919,210.53				OK -

EXPLANATION OF REFUND

OK -

Credit is granted of the tax paid on charges for mounted gas turbine barges that were determined to be real property. The credit is made with interest pursuant to Section 1139(a) of the New York State Sales and Use Tax Law.

APPROVAL

PREPARED BY

DATE

APPROVED BY

DATE

PRINCIPAL OR ASSOC. SALES TAX EXAMINER

DATE

SALES TAX AUDIT SUPERVISOR

DATE

DIRECTOR OR ASSISTANT DIRECTOR

DATE

COMMISSIONER

DATE

COMMISSIONER

DATE

COMMISSIONER

DATE

1/8 James H. Tully

5/16/79

1/8 Thomas H. Lynch

5/2/79