

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Amherst Cablevision, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 3/1/71 - 2/28/74. :

State of New York
County of Albany

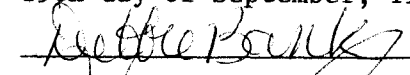
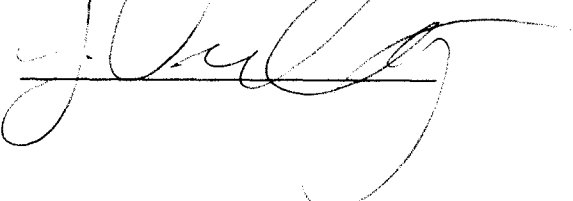
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Determination by mail upon Amherst Cablevision, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Amherst Cablevision, Inc.
602 Grover Cleveland Hgwy.
Amherst, NY 14226

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
19th day of September, 1980.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Amherst Cablevision, Inc. :

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for Redetermination of a Deficiency or a Revision :
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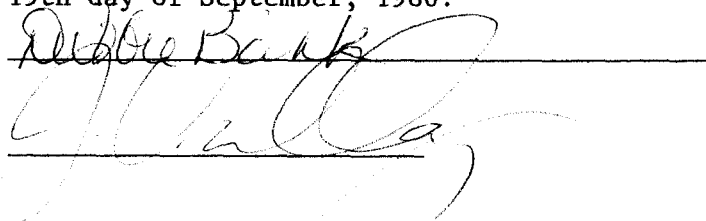
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Determination by mail upon Joseph C. Cane the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Joseph C. Cane
Miller, Farmelo, Cane & Greene
1500 Liberty Bank Bldg.
Buffalo, NY 14202

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
19th day of September, 1980.



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

September 19, 1980

Amherst Cablevision, Inc.
602 Grover Cleveland Hgwy.
Amherst, NY 14226

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph C. Cane
Miller, Farmelo, Cane & Greene
1500 Liberty Bank Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
AMHERST CABLEVISION, 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 March 1, 1971 through February 28,	:	
1974.	:	

Applicant, Amherst Cablevision, Inc., 602 Grover Cleveland Highway, Amherst, New York 14226, 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 March 1, 1971 through February 28, 1974 (File No. 01544).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, March 8, 1977, and was continued March 10, 1977 and July 13, 1977. Applicant appeared by Miller, Farmelo, Cane & Greene (Joseph C. Cane, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Arnold M. Glass and James J. Morris, Esqs., of counsel).

ISSUES

I. Whether applicant, Amherst Cablevision, Inc., is liable for sales taxes on "drop-line materials" purchased for the installation of cable TV services.

II. Whether penalties and interest should be waived.

FINDINGS OF FACT

1. On November 25, 1974, as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and

Use Taxes Due against applicant for taxes due of \$9,427.89, plus penalty and interest of \$2,593.21, for a total due of \$12,021.10.

2. Applicant executed a consent extending the time within which to issue an assessment of sales and use taxes for the period March 1, 1971 through February 28, 1974 to December 20, 1974.

3. Applicant, Amherst Cablevision, Inc., operates a community television antenna (commonly known as cable TV) in the town of Amherst, New York. It is licensed by the town, the Federal Communications Commission and the State of New York.

4. On audit, the Sales Tax Bureau found \$8,057.50 in tax due on assets purchased by applicant and \$1,370.39 in tax due on expense purchases. Applicant does not contest the additional tax due on its expense purchases.

5. Applicant has produced documentary evidence which shows the payment of sales tax to suppliers on purchases of assets. It was stipulated that the Sales Tax Bureau had incorrectly assessed a tax of \$4,726.53 on applicant's purchases of assets. It was further stipulated that \$710.06 of the tax assessed on assets was due from applicant. Tax in the amount of \$2,620.91 remains at issue on applicant's purchases of materials referred to as "drop-line materials".

6. "Drop-line materials" are materials that applicant uses in the installation of cable television services at the subscriber's home. These materials run from the main cable line into and throughout the subscriber's home and includes the tap device, the drop cable, the material to secure the drop material, the transformer which is installed in the subscriber's home, and other materials used in attaching the drop cable to the subscriber's home and supporting it from the tap to the subscriber's home.

"Drop-line materials" are permanently attached to the subscriber's home. They are not removed when the cable television service is terminated.

Service is terminated by disconnecting the tap on the main cable line or by turning said tap off.

7. Applicant's contract for cable television service provides for the charge of a fee for the installation of cable TV service. This fee is not segregated as to materials and labor. Sales tax is collected from the subscriber on the installation fee.

8. At times, applicant runs promotions to achieve sales which provided for "free" installation of cable TV service.

9. At all times, applicant acted in good faith and on the advice of counsel and its accountants.

CONCLUSIONS OF LAW

A. That section 1101(b)(4)(i) provides an exclusion from the sales tax on tangible personal property purchased by a person for resale as such or for use in performing a service subject to tax provided the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

B. That the "drop-line materials" purchased by applicant were not purchased for resale within the meaning and intent of section 1101(b)(4)(i) of the Tax Law but rather were purchased for use in providing cable television services at the subscriber's home notwithstanding the fact that the materials are not removed when the service is terminated.

C. That interest in excess of the minimum interest and the penalty imposed, pursuant to section 1145(a) of the Tax Law, is hereby waived.

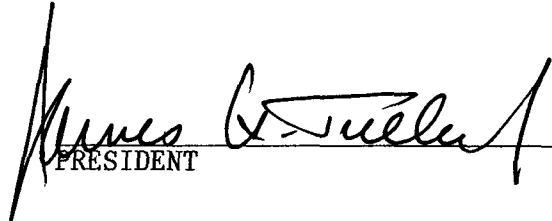
D. That the application of Amherst Cablevision, Inc. is granted to the extent indicated in Fact "5" and Conclusion "C" above; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment

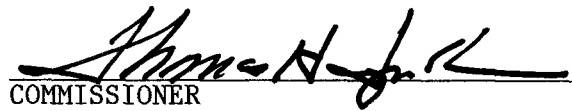
of Sales and Use Taxes Due issued November 25, 1974. Except as so granted,
the application is in all other respects denied.


DATED: Albany, New York

STATE OF NEW YORK

SEP 19 1980


PRESIDENT


COMMISSIONER


COMMISSIONER

REQUEST FOR BETTER ADDRESS

Requested by <i>J. Medaling</i>	Unit Tax Appeals Bureau Room 167 - Bldg. 49 State Campus Albany, New York 12247	Date of Request SEP 20 1980
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number <i>16-3407012</i> 98-420003500	Date of Petition 10-8-90 <i>N/L</i>
Name <i>Amherst Cablevision Inc</i>	
Address <i>602 Grove (Cleveland) Highway Amherst, NY 14226</i>	

Results of search by Files

<input checked="" type="checkbox"/> New address:	<i>(on file) 789 Indian Church Rd. West Seneca, NY 14224</i>
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by <i>200</i>	Section <i>1</i>	Date of Search <i>10/1/80</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Handwritten: 12/26/80

Amherst Cablevision, Inc.
602 Grover Cleveland Hwy.
Amherst, NY 14226

Handwritten: cancelled
11/2/80

Handwritten: 1/14/81

STATE OF NEW YORK
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State of New York
County of Albany

Jay Vredenburg, 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 7th day of November, 1980, he served the within notice of Determination by mail upon Amherst Cablevision, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Amherst Cablevision, Inc.
789 Indian Church Rd.
West Seneca, NY 14224

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
7th day of November, 1980.

Esther A. Bank

J. Vredenburg