

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Douglas H. Casement, Enterprises :
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 :
Periods 6/1/74-11/30/77 and 12/1/77-5/31/79. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

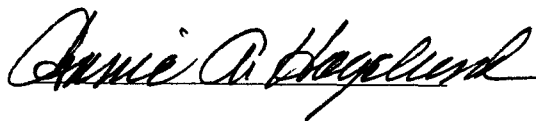
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of November, 1981, he served the within notice of Decision by certified mail upon Douglas H. Casement, Enterprises, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

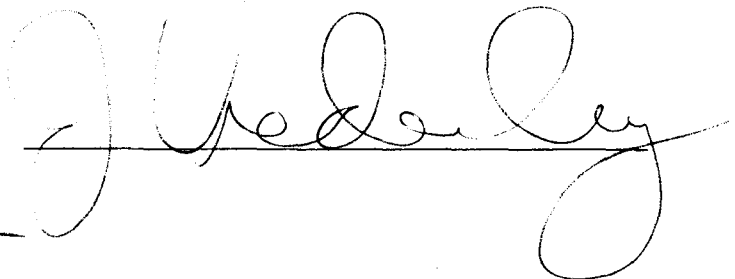
Douglas H. Casement, Enterprises
58 Ridge Rd.
Poughkeepsie, NY 12603

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
27th day of November, 1981.





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

November 27, 1981

Douglas H. Casement, Enterprises
58 Ridge Rd.
Poughkeepsie, NY 12603

Gentlemen:

Please take notice of the Decision 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DOUGLAS H. CASEMENT, ENTERPRISES	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales & Use Taxes under Articles 28 & 29 of	:	
the Tax Law for the Periods June 1, 1974	:	
through November 30, 1977 and December 1, 1977	:	
through May 31, 1979.	:	

Petitioner Douglas H. Casement, Enterprises, 58 Ridge Road, Poughkeepsie, New York 12603, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the periods June 1, 1974 through November 30, 1977 and December 1, 1977 through May 31, 1979 (File No. 28985).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on May 21, 1981, at 2:45 P.M. Petitioner appeared by Douglas H. Casement. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether petitioner's gross receipts from a coin operated car wash are subject to sales tax.

FINDINGS OF FACT

1. Petitioner, Douglas H. Casement, Enterprises, operated a contracting business as well as a self service coin operated car wash.

2. On December 13, 1979, as the result of an audit, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioner covering the periods June 1, 1974 through November 30,

1977 and December 1, 1977 through May 31, 1979 asserting taxes due of \$2,905.97 and \$1,800.36, respectively, plus applicable penalty and interest.

3. During the periods at issue, petitioner was not a registered vendor for sales tax purposes and consequently did not file sales tax returns.

4. On audit, the Audit Division determined that petitioner failed to collect tax on receipts derived from the car wash operation. Said receipts amounted to \$100,316.00 for the audit period and petitioner was held liable for the tax due thereon of \$4,706.33. No additional tax liability was found due on the contracting portion of the business.

5. Petitioner argued that it was not the intent of the Sales Tax Law to impose a tax on gross receipts but rather was intended to be an "add on tax" to the sales price of tangible personal property and services. Petitioner took the position that since the car wash was coin operated and unattended, sales tax could not be collected from the customer and thus the Audit Division erroneously imposed tax on gross receipts. Moreover, petitioner argued that the car wash is similar to a coin operated laundry which is not subject to tax.

6. Petitioner did not consider that sales tax was an element of his sales price for the car wash.

7. Reasonable cause did not exist for petitioner's failure to collect the sales taxes at issue.

CONCLUSIONS OF LAW

A. That section 1105(c)(3) of the Tax Law imposes a tax on receipts from the service of "maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment... except any receipts from laundering, dry cleaning...".

That a car wash constitutes a taxable service within the meaning and intent of said section of the Tax Law and that such service does not fall within the exclusion for "laundering". (Matter of Patsy Scarano d/b/a Easy Way Car Wash, STC December 3, 1975.)

B. That section 1101(b)(3) of the Tax Law defines the term "receipt" as the amount of the sale price of any property and the charge for any taxable service. That petitioner was required to collect the tax from the customer when collecting the price to which it applies pursuant to section 1132(a) of the Tax Law and since petitioner failed to collect tax on receipts from the car wash he is personally liable for such taxes in accordance with the provisions of section 1133(a) of the Tax Law.

That petitioner was not prohibited from collecting sales tax because the monies were put in a coin box. Petitioner was permitted to use the "unit price" method of collecting tax, that is, displaying a placard stating that the total price for the service includes sales tax.

C. That the petition of Douglas H. Casement, Enterprises is denied and the notices of determination and demand for payment of sales and use taxes due issued December 13, 1979 are sustained.

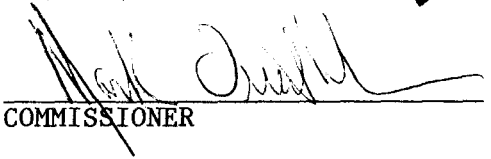
DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER