

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Caloias Service Station :
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 6/30/72. :

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Caloias Service Station, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Caloias Service Station
1524 W. Genesee St.
Syracuse, NY 13204

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
3rd day of January, 1983.

Kathy Pfaffenbach

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Caloias Service Station :
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 6/30/72. :

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Victor Chini the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Victor Chini
Chini & Chini
915 State Tower Bldg.
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
3rd day of January, 1983.

Kathy Pfaffenbach

J. Vredenburg

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

January 3, 1983

Caloias Service Station
1524 W. Genesee St.
Syracuse, NY 13204

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 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Victor Chini
Chini & Chini
915 State Tower Bldg.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSIONER

In the Matter of the Petition	:	
	:	
of	:	
	:	
CALOIAS SERVICE STATION	:	DECISION
	:	
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 30, 1972.	:	

Petitioner, Caloias Service Station, 1524 West Genesee Street, Syracuse, New York 13204, filed a petition 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 30, 1972 (File No. 11429).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on May 13, 1980 at 1:15 p.m. and continued on October 26, 1981 at 2:45 P.M. Petitioner appeared with Victor Chini, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether an automatic car wash system installed on petitioner's premises constituted a capital improvement to real property.

FINDINGS OF FACT

1. On March 24, 1975, petitioner, Caloias Service Station, filed an application for refund for sales tax of \$1,820.00 paid on the purchase and installation of car wash equipment. Petitioner's basis for the claim is that the equipment was affixed to the realty in such manner to constitute a capital improvement and thus exempt from sales and use taxes.

2. On September 3, 1975, the Audit Division denied the refund claim on the grounds that the equipment was not permanently affixed to the real property and could be removed without causing material damage to the building or the equipment.

3. The car wash system purchased by petitioner for \$26,000.00 consisted of the following equipment: Split Unit Mechanical Man Car Washer with separate blower, guide rails, overhead rails, 15 HP Worthington Pump, vacuum cleaner, towel dispenser and waste receptacle. Optional equipment included 1 Bay Mechanical Man Car Wash Boiler, Mechanical Man sign (2 face 6x8), light set, separate blower, and set of window brushes.

The purchase price included an installation charge of \$3,000.00 for plumbing, electrical, mechanical and duct work. Petitioner was required to bring the water lines to the building and install 440V, 4 phase electricity.

4. The car wash system was installed in a 54 ft. bay of petitioner's service station. It was necessary to remove a lift in order to install the system. Guide rails for the cars and the washer unit are bolted to the floor. A water spray for cleaning the under carriage of the car and the hot water heater are also bolted to the floor. The washer unit is on wheels that are attached to the guide rails. The brushes and dryer are attached to the washer unit.

5. The car wash equipment set forth in Finding of Fact "3" could be dismantled, removed and reinstalled at another location without causing material damage to the real property or the equipment itself.

CONCLUSIONS OF LAW

A. That the car wash equipment was not permanently affixed to petitioner's real property and therefore does not constitute a capital improvement within

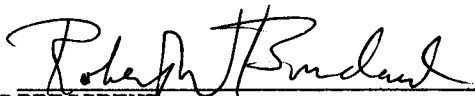
the meaning and intent of section 1105(c)(3) of the Tax Law. That said equipment when installed retained its identity as tangible personal property. Accordingly, the purchase and installation of the car wash equipment are subject to the taxes imposed under sections 1105(a) and 1105(c)(3) of the Tax Law.


B. That the petition of Caloias Service Station is denied and the refund denial issued September 3, 1975 is sustained.

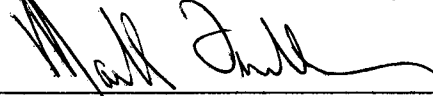
DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER