

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

December 20, 1983

A & B Alarms, Inc.
79 River Heights Drive
Smithtown, NY 11787

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Gerald Kudler
Kudler & Berner
20 Miller Place
Syosset, NY 11791
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
A & B ALARMS, INC.	:	DECISION
for Revision of Determinations or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 1975	:	
through May 31, 1979.	:	

Petitioner, A & B Alarms, Inc., 79 River Heights Drive, Smithtown, New York 11787, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1975 through May 31, 1979 (File No. 31664).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 2, 1983 at 9:15 A.M., with additional evidence to be submitted by March 30, 1983. Petitioner appeared by Gerald Kudler, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioner's reported nontaxable sales for the period June 1, 1975 through May 31, 1979.

FINDINGS OF FACT

1. Petitioner, A & B Alarms, Inc., sold, installed, operated and maintained burglar alarm systems. Petitioner offered both local and central station alarm systems. A local alarm system is an outside sounding device installed on the customer's premises. A central station system is one connected by leased telephone lines to a central station where signals are received and monitored

by petitioner. In connection with a central station system, petitioner charges a monthly fee for monitoring this system.

2. On February 27, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period June 1, 1975 through November 30, 1976 for taxes due of \$2,652.80, plus penalty and interest of \$1,160.19, for a total of \$3,812.99. On January 31, 1980, a second notice was issued for the period December 1, 1976 through May 31, 1979 for taxes due of \$5,818.19, plus interest of \$831.17, for a total of \$6,649.36.

The foregoing notices were issued as a result of petitioner's failure to substantiate the nontaxable sales reported on sales tax returns filed for the periods shown thereon. This information was requested through correspondence by the Audit Division.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period at issue, to June 20, 1980.

4. Petitioner timely filed petitions for redetermination of the above deficiencies.

5. Following a pre-hearing conference, the Audit Division examined certain books and records provided by petitioner. The Audit Division found that these books and records (deposit slips, customer ledger sheets, purchase invoices) were incomplete and inadequate for purposes of verifying nontaxable sales. It did, however, determine that sales tax was included in the gross sales reported by petitioner and thereby the additional taxable sales were overstated. In addition, a review of purchase invoices for the period March 1, 1979 through May 31, 1979 disclosed that sales tax was paid on 29.06 percent of

materials purchased. Since all of petitioner's sales were held taxable,¹ the Audit Division recommended that petitioner be given credit for such taxes paid.² Based on the above audit, the Audit Division revised the taxes due as follows: Notice #90,727,864 - \$2,138.86 (June 1, 1975 through November 30, 1976) and Notice #S800124400C - \$5,048.47 (December 1, 1976 through May 31, 1979).

6. Petitioner admitted that it cannot produce the books and records necessary to substantiate its nontaxable sales for the period at issue. Petitioner stated that the business, at present, operates substantially the same and requested that it be allowed to submit records for a current period to evaluate its method of reporting taxable and nontaxable sales.

Petitioner's request was granted and petitioner was instructed to submit records for the period March 1, 1980 through May 31, 1980 by March 31, 1983. However, no such records were submitted.

7. Petitioner argued that its nontaxable sales consisted of installations that resulted in a capital improvement to real property and sales to municipalities.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law specifically provides, in part, that it shall be presumed that all receipts for property or services... are subject to tax until the contrary is established and the burden of proving that any receipt... is not taxable shall be upon the person required to collect tax.

¹ The petitioner erroneously collected tax on the monthly charge for monitoring a central station alarm system.

² The petitioner should have been allowed a credit for taxes paid only on materials which were actually resold or rented to its customers.

That petitioner failed to overcome its burden and therefore is liable for the additional taxes determined by the Audit Division pursuant to section 1133(a) of the Tax Law.

B. That the petitions of A & B Alarms, Inc. are granted to the extent that the additional taxes due shall be reduced in accordance with Finding of Fact "5"; that in all other respects the notices of determination and demand for payment of sales and use taxes due issued February 27, 1978 and January 31, 1980, are sustained.

DATED: Albany, New York

DEC 20 1983

STATE TAX COMMISSION

Rodolfo A. Chen
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of A & B Alarms, Inc.	: : : : : :	: : : : : :
for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article 28 & 29 of the Tax Law for the Period 6/1/75-5/31/79.		AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon A & B Alarms, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

A & B Alarms, Inc.
79 River Heights Drive
Smithtown, NY 11787

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of December, 1983.

David Parchuck

James A. Hagelund
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
A & B Alarms, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/75-5/31/79. :
:

AFFIDAVIT OF MAILING

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 20th day of December, 1983, he served the within notice of Decision by certified mail upon Gerald Kudler, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald Kudler
Kudler & Berner
20 Miller Place
Syosset, NY 11791

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
20th day of December, 1983.

David Parchuck

Bruce A. Hays
pursuant to Tax Law section 174

Authorized to administer oaths

P 470 315 159

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Gerald Kudler	
Street and No.	
20 Miller Place	
P.O., State and ZIP Code	
Sunset, NY 11791	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 470 315 158
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