

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

June 17, 1983

Cablescope, Inc.  
f/k/a Courier Cable Co., Inc.  
600 Statler Bldg.  
Buffalo, NY 14202

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 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  
Edwin H. Wolf  
Falk, Siemer, Glick, Tuppen & Maloney  
2200 Main Place Tower  
Buffalo, NY 14202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|---|---|----------|
| In the Matter of the Petition                 | : |          |
|   | : |          |
| of  | : |          |
|   | : |          |
| CABLESCOPE, INC.                              | : | DECISION |
| f/k/a COURIER CABLE CO., INC.                 | : |          |
|   | : |          |
| 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 September 1, | : |          |
| 1974 through August 31, 1977.                 | : |          |

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Petitioner, Cablescope, Inc., f/k/a Courier Cable Co., Inc., 600 Statler Bldg., Buffalo, New York 14202, 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 September 1, 1974 through August 31, 1977 (File No. 23542).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on April 22, 1982, at 9:15 A.M. Petitioner appeared by Falk, Siemer, Glick, Tuppen & Maloney, Esqs. (Edwin H. Wolf, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the purchases by petitioner of "drop line" equipment used in providing cable television services are subject to sales and use tax.

II. Whether the purchases by petitioner of converters used in providing its pay television services are subject to sales and use tax.

FINDINGS OF FACT

1. On August 7, 1978, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes

Due against petitioner, Courier Cable Co., Inc. (currently known as Cablescope, Inc.), in the amount of \$70,298.45 plus interest of \$11,079.92 for a total due of \$81,378.37 for the period September 1, 1974 through August 31, 1977.

2. On December 6, 1977 petitioner, by its treasurer, R.C. Lyons, Jr., executed a consent extending the period of limitation for assessment of sales and use taxes due for the period September 1, 1974 through August 31, 1977 to December 20, 1978.

3. Petitioner operates a cable television service. Said service consists of picking up signals from stations located outside the local viewing area, amplifying these signals and sending them via cables to individual subscribers' homes. For an additional charge, subscribers may also subscribe to Home Box Office which, by means of a converter attached to the television set, allows subscribers to see first run movies on television.

4. In installing the cable systems in subscribers' homes, petitioner employed a drop line system. A drop line system includes the wire, cable and associated equipment that is connected to the cable service transmission line at a telephone pole and outside a subscriber's home and transports the signal from the line into the subscriber's home and to the terminal device on the customer's television set. Petitioner charged its customers an initial installation fee and a monthly charge for the cable service. When a customer's service was terminated, petitioner's employees would disconnect the wire at the pole and seal off the connection to protect it from the weather. If the customer so desired, petitioner would remove the wire from the house. If a new customer wanted cable service at the same location, the same line could be used for the new service depending on the condition of the line. Petitioner did not consider the installation of the drop line system to be a sale to its customers.

The system was considered a part of the installation of the cable service rather than a sale.

5. If a customer wanted Home Box Office service, petitioner would install a converter box which was placed on top of the customer's television set. Petitioner charged an initial installation fee and a monthly service charge for Home Box Office. Additionally, petitioner charged a \$1.00 per month fee for use of the converter box. The work orders signed by the customers stated that the customers were renting the converter boxes and that the boxes remained the property of petitioner. No evidence was offered indicating that petitioner billed its customers separately for the use of the converter boxes or that it charged a separate sales tax on the alleged rental. If a customer terminated the Home Box Office service, the line to the converter box would be disconnected and reconnected directly to the set. Petitioner would retrieve the converter box. Petitioner paid no sales tax on purchases of the converter boxes because it considered them to be for resale to its customers.

6. On audit, the Audit Division found that petitioner had paid no sales tax on purchases of the drop line materials. The auditor, using a test period of January 1, 1977 through August 31, 1977, examined all of petitioner's purchase invoices, including drop line purchases. The auditor found that tax had not been paid on purchases amounting to \$79,564.24. Of that amount petitioner agreed to the taxability of \$23,596.11 in purchases. The auditor compared the agreed upon purchases to total purchases for the audit period and arrived at an error rate for the test period of 8.48 percent which, when applied to total purchases for the audit period, resulted in additional tax due of \$7,214.95. The drop line purchases which petitioner did not agree were taxable, amounted to \$55,968.13 which resulted in an error rate of 20.12 percent for the test

period which, when applied to total purchases for the audit period, resulted in additional tax due of \$17,118.40.

7. The auditor also examined petitioner's asset additions for the entire audit period and found total asset additions of \$656,644.12 on which tax had not been paid. Petitioner agreed to the taxability of \$107,835.34 of the aforesaid amount resulting in tax due of \$7,548.19. The remaining asset additions consisted of purchases of the Home Box Office coverter boxes which resulted in additional tax of \$38,416.61, which amount petitioner contested, since it considered such purchases to be for resale to its customers.

8. At the hearing the Audit Division conceded that the auditor's use of a test period audit of petitioner's purchases was unwarranted and agreed that the assessment for purchases should be reduced to the amount found to be due for the test period of January 1, 1977 through August 31, 1977. As a result the Audit Division agreed that the tax due on purchases should be reduced to \$5,569.36 resulting in a reduced assessment totalling \$51,534.46 plus interest. The amounts remaining in issue were \$3,918.00 for the drop line purchases and \$38,416.61 for the converter box purchases.

9. Petitioner argued that the drop line systems were transferred to its customers in conjunction with a taxable service, the installation of the cable service, and were, therefore, not subject to tax when originally purchased by petitioner. As to the Home Box Office converter boxes, petitioner argued that, since these boxes were rented to the subscribers for \$1.00 a month, they were purchases for resale and not subject to tax.

#### CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, except as otherwise provided

under Article 28. Section 1101(b)(4) defines a retail sale, in pertinent part, as a sale of tangible personal property to any person for any purpose, other than for resale of the property as such, or for sale of the property as a physical component part of other tangible personal property, or for use in the performance by the purchaser of taxable installation services where the property sold is later actually transferred to the person receiving the service. Sale of cable television service is not subject to sales and use taxes (New York State Cable Television Association v. State Tax Commission, 88 Misc. 2d 601, aff'd, 59 A.D. 2d 81).

B. That inasmuch as petitioner may remove and reuse the drop line systems and never actually transferred ownership of the system to its customers, the drop line systems purchased by petitioner were retail sales to petitioner and subject to tax within the meaning and intent of section 1101(b)(4) of the Tax Law (see Matter of Amherst Cablevision, Inc., State Tax Commission, September 19, 1980).

C. That inasmuch as petitioner failed to prove that the charge for the Home Box Office converter boxes was a separately billed rental and not merely part of the monthly service charge, petitioner neither purchased said converters for resale as such, nor for use by it in providing a service subject to tax under section 1105(c) of the Tax Law and, therefore, the purchases of said converter boxes by petitioner were subject to sales and use tax (see Matter of Orth-O-Vision, Inc., State Tax Commission, April 1, 1983).


D. That the petition of Cablescope, Inc., f/k/a Courier Cable Co., Inc., is granted to the extent indicated in Finding of Fact "8"; that the Audit Division is directed to modify the Notice of Determination and Demand for

Payment of Sales and Use Taxes Due issued August 7, 1978 accordingly; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

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|   |   |                      |
|---|---|----------------------|
| In the Matter of the Petition                       | : |                      |
| of  | : |                      |
| Cablescope, Inc.                                    | : |                      |
| f/k/a Courier Cable Co., 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 | : |                      |
| 9/1/74 - 8/31/77.                                   | : |                      |

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State of New York  
County of Albany

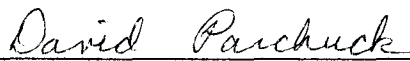


David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of June, 1983, he served the within notice of Decision by certified mail upon Cablescope, Inc. f/k/a Courier Cable Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cablescope, Inc.  
f/k/a Courier Cable Co., Inc.  
600 Statler 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
17th day of June, 1983.

ADMINISTRATOR TO ADMINISTER  
OATHS RELATIVE TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

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|   |   |                      |
|---|---|----------------------|
| In the Matter of the Petition                       | : |                      |
| of  | : |                      |
| Cablescope, Inc.                                    | : |                      |
| f/k/a Courier Cable Co., 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 9/1/74 - 8/31/77.                            | : |                      |

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State of New York  
County of Albany

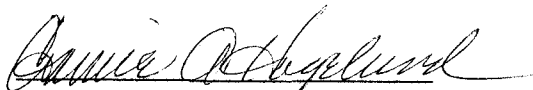
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of June, 1983, he served the within notice of Decision by certified mail upon Edwin H. Wolf the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


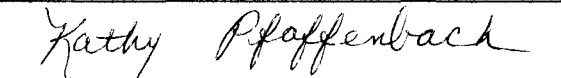
Edwin H. Wolf  
Falk, Siemer, Glick, Tuppen & Maloney  
2200 Main Place Tower  
Buffalo, NY 14202

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  
17th day of June, 1983.



NOTARY PUBLIC  
OFFICE OF THE STATE TAX COMMISSION  
SECTION 174

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P 481 207 593

*Cablescape Inc.*  
*444 Courier Cable Co. Inc.*  
*647 Statler Bldg.*  
*Buffalo, N.Y.*  
*14202*

*Edmund H. Wolf*  
*Franklin Street Tupper*  
*8300 Main Place Tower*  
*Buffalo NY 14202*

PS Form 3800, Feb. 1982

|   |    |
|---|----|
| 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

|   |    |
|---|----|
| Special Delivery Fee                              |    |
| Restricted Delivery Fee                           |    |
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| TOTAL Postage and Fees                            | \$ |
| Postmark or Date                                  |    |