

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

May 6, 1983

Coyne Industrial Laundry of Schenectady, Inc.
1435 Erie Blvd.
Schenectady, NY 12305

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
John A. Thorne
Coopers & Lybrand
One Lincoln Center
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
COYNE INDUSTRIAL LAUNDRY	:	DECISION
OF SCHENECTADY, 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.	:	

Petitioner, Coyne Industrial Laundry of Schenectady, Inc., 1435 Erie Boulevard, Schenectady, New York 12305, 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. 24842).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on April 28, 1981, at 1:15 P.M. Petitioner appeared by Bond, Schoeneck & King (Thomas J. Valenti, Esq., of counsel) and by Coopers & Lybrand (John A. Thorne). The Audit Division appeared by Paul B. Coburn Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether a charge for operating expenses, included in the cost of goods purchased by petitioner from a related corporation, was part of the taxable purchase price of the goods and thus subject to use tax under section 1110 of the Tax Law.

II. Whether petitioner's receipt, storage, pick-up and delivery, and laundering of uniforms and towels pursuant to the operation of a laundry

service constituted a use of such uniforms and towels within New York State subject to use tax under section 1110 of the Tax Law.

III. Whether petitioner is liable for local use tax on the use of uniforms and towels in higher tax rate jurisdictions outside Schenectady County.

FINDINGS OF FACT

1. On June 5, 1978, the Audit Division, as the result of a field audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Coyne Industrial Laundry of Schenectady, Inc., in the amount of \$53,825.71 plus interest of \$5,544.37 for a total of \$63,263.45 for the period September 1, 1974 through August 31, 1977.

2. Petitioner provides laundry services to industrial and commercial organizations in the eastern part of New York State as well as in Massachusetts, Connecticut, and Vermont. Said service consists of furnishing uniforms, towels, etc. under an agreement which provides for having such articles returned periodically for laundering and to replace them with clean articles. Additionally petitioner sells rest room supplies, garments, sweeping compounds, air freshener, and scrap materials.

3. Petitioner purchases most of the uniforms and towels for its laundry service from a related corporation, Coyne Supply Corp. ("Supply"). Both petitioner and Supply are subsidiaries of Coyne International Enterprises Corp. Supply charged petitioner the actual cost of the supplies plus seven percent of this cost. The additional seven percent charge reflected Supply's operating expenses in supplying petitioner. No purchase invoices were sent by Supply to petitioner in connection with the purchases and there was no actual transfer of cash between the parties. The entire transaction was accomplished by means of computerized bookkeeping entries.

4. At the end of the year, in the event that the seven percent charge was insufficient to cover Supply's expenses, Supply would assess petitioner an amount sufficient to recover its expenses in proportion to the amount of purchases made by petitioner from Supply. This end-of-year adjustment was also effected by means of a computerized bookkeeping entry. Both the seven percent operating charge and the end-of-year adjustment were recorded in petitioner's books as part of costs of supplies.

5. In reporting its taxable purchases on its sales tax returns petitioner reduced the purchases from Supply by the seven percent charge. Petitioner further failed to include the end-of-year adjustment in taxable purchases on the ground that, since Supply was a related corporation, the true cost of the purchases should be determined by the price Supply had paid for the goods and, furthermore, that the seven percent charge and the end-of-year adjustment were really management fees rather than portions of the selling price of the supplies. On audit, the Audit Division deemed both items taxable as part of the purchase price of the garments and linen. Petitioner maintained that since these transactions were book entries only and the intent was to charge a management fee between related corporations these charges were not taxable.

6. Petitioner received the uniforms and towels supplied by Supply in Schenectady County where it sorted and stored the goods in preparation for shipment to its customers. Petitioner picked up and delivered the uniforms and towels for its customers. It laundered the uniforms and towels in Schenectady, New York. The uniforms were marked for specific customers and these same uniforms were returned to the same customer after each laundering. The towels were not marked for return to a specific customer and consequently were used by petitioner's customers located in various cities and counties in eastern New York as well as out-of-state.

7. Some of petitioner's customers were located outside New York State in Vermont, Massachusetts and Connecticut. On its sales tax returns petitioner reduced gross purchases by an average of 40 percent on the ground that this percentage represented sales of laundry services to out-of-state customers and the garments and linens were being used out-of-state and were thus not subject to New York State use tax. The Audit Division disallowed the 40 percent reduction based on the fact that the linens delivered out-of-state were returned to Schenectady for laundering thereby constituting a use in New York State subject to use tax.

8. Petitioner also alleged that it paid use tax on the linens in the various states in which the customers were located. However, petitioner offered no evidence that any such out-of-state use taxes were paid.

9. Some of petitioner's customers were located in higher taxing rate jurisdictions than Schenectady County where the tax rate was 4 percent. The Audit Division assessed use tax on linens delivered to these jurisdictions at the higher rate since these linens were deemed to have been used in the higher taxing jurisdiction. Petitioner argued that the Audit Division could not assess use tax at the rate of the customer's location in one instance and at the rate of the petitioner's location in another instance. The petitioner maintained that if the Audit Division assessed tax at the Schenectady County rate for out-of-state sales then the Division had to assess use tax at Schenectady County rates for in-state sales.

CONCLUSIONS OF LAW

A. That section 1101(b)(5) of the Tax Law defines sale, in part, as "any transfer of title or possession or both... in any manner or by any means whatsoever for a consideration".

B. That the language of the aforesaid statute "is very broad and inclusive and clearly expresses an intent to encompass most transactions involving the transfer or use of commodities in the business world" (Albany Calcium Light Co. v. State Tax Commission, 55 A.D.2d 502 revd. on other grounds 44 N.Y.2d 986).

C. That the fact that petitioner attempted to describe the seven percent charge and the end-of-year adjustment as maintenance fees or bookkeeping entries is immaterial. "Regardless of what one calls this charge, the effect is the same" (Albany Calcium Light Co., supra). Supply's cost was marked up to include its expenses and this cost was passed along to the petitioner. In a sale between unrelated companies such expenses may not be deducted from purchase receipts (20 NYCRR 526.5(e)). The fact that in this case the corporations were related is of no effect since "the sale of property by one related corporation to another related corporation is a retail sale and taxable to the extent of the consideration paid" (20 NYCRR 526.6(d)(8)(i)). In this case the consideration paid by petitioner included the seven percent charge and the end-of-year adjustment and the Audit Division, therefore, properly included both items in the taxable selling price of the uniforms and towels supplied to petitioner.

D. That section 1110 of the Tax Law imposes a use tax for the use within New York State of any tangible personal property purchased at retail. Section 1101(b)(7) defines use as:

"(t)he exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of such property."

E. That the reception, storage; sorting and laundering of the linens and garments at petitioner's plant in Schenectady constituted a use in New York State within the meaning and intent of section 1101(b)(7) of the Tax Law and

the Audit Division properly assessed tax at the four percent Schenectady County rate on linens and garments delivered to out-of-state customers.

F. That the pick-up and delivery of linens from customers located in higher taxing jurisdictions constituted a use in said jurisdictions within the meaning and intent of section 1101(b)(7) of the Tax Law. Petitioner in the conduct of business was a resident of those jurisdictions (20 NYCRR 526.15(b)(2)(c)). Petitioner's use of the uniforms and towels in the jurisdictions was therefore subject to the use tax imposed under section 1110 of the Tax Law and the Audit Division was correct in assessing the use tax against petitioner.

G. That the petition of Coyne Industrial Laundry of Schenectady, Inc., is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 5, 1978 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Coyne Industrial Laundry of Schenectady, Inc. :
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. :
:

AFFIDAVIT OF MAILING

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Coyne Industrial Laundry of Schenectady, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Coyne Industrial Laundry of Schenectady, Inc.
1435 Erie Blvd.
Schenectady, NY 12305

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
6th day of May, 1983.

David Parchuck

Annice A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Coyne Industrial Laundry of Schenectady, Inc. :
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. :

AFFIDAVIT OF MAILING

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 6th day of May, 1983, he served the within notice of Decision by certified mail upon John A. Thorne the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John A. Thorne
Coopers & Lybrand
One Lincoln Center
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
6th day of May, 1983.

David Parchuck

James O. Hegelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 481 207 716

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Coyne Industrial</u>	
<u>Laundry of Schenectady, Inc.</u>	
Street and No.	
<u>1435 Erie Blvd.</u>	
P.O., State and ZIP Code	
<u>Schenectady, NY 12305</u>	
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 481 207 717

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>John A. Thorne</u>	
<u>Coopers & Lybrand</u>	
Street and No.	
<u>One Lincoln Center</u>	
P.O., State and ZIP Code	
<u>Syracuse, NY 13202</u>	
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