

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

March 18, 1983

Coyne Industrial Laundry, Inc. of Syracuse
132 Cortland Ave.
Syracuse, NY 13202

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
Raymond T. Ryan
Coopers and 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, INC.	:	DECISION
OF SYRACUSE	:	
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, Inc. of Syracuse, 132 Cortland Avenue, Syracuse, New York 13202, 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. 25043).

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 2:30 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, in Onondaga County, pursuant to the operation of a laundry service, constituted a use of such uniforms and towels in Onondaga County subject to the local use tax imposed by such 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, Inc. of Syracuse, in the amount of \$32,731.96 plus interest of \$5,544.37 for a total of \$38,276.33 for the period September 1, 1974 through August 31, 1977.

2. Petitioner provides laundry service to industrial and commercial organizations in the central New York State area. 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 freshner, and scrap materials.

3. Petitioner purchased most of the uniforms and towels for its laundry service from a related corporation, Coyne Supply Corp. ("Supply"). Both petitioner and Supply were subsidiaries of Coyne Industrial 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 corporations. 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 the 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 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. Petitioner maintained that since these transactions were book entries only and the intent was to charge a management fee between two related corporations these charges were not taxable.

6. Petitioner received the uniforms and towels supplied by Supply in Onondaga County where it sorted and stored the goods in preparation for shipment to its customers. Petitioner picked up and delivered the uniforms for its customers. It laundered the uniforms and towels in Onondaga County. 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 central New York.

7. Some of petitioner's customers were located in Oswego County. The sales and use tax rate in Oswego County, except for Oswego City, was four percent, whereas the tax rate in Onondaga County was seven percent. The Audit Division assessed use tax at the seven percent Onondaga County rate since this was the original place of delivery and the location of the laundry facilities.

Petitioner argued that the tax should be at the rate of the jurisdiction of the customer since this was the place of ultimate intended use of the uniforms and towels and that the mere reception, sorting and laundering in Syracuse did not constitute a use of the uniforms and towels.

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."

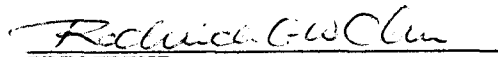
E. That the reception, storage, sorting and laundering of the linens and garments at petitioner's plant in Syracuse constituted a use in Onondaga County within the meaning and intent of section 1101(b)(7) of the Tax Law and the Audit Division properly assessed tax at the seven percent Onondaga County rate.

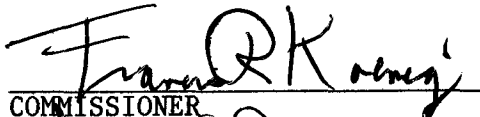
F. That the petition of Coyne Industrial Laundry, Inc. of Syracuse is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 5, 1978 is sustained.

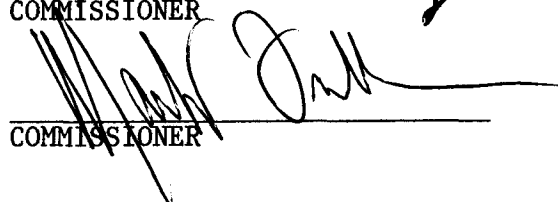
DATED: Albany, New York

STATE TAX COMMISSION

MAR 18 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Coyne Industrial Laundry, Inc. of Syracuse :
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 18th day of March, 1983, he served the within notice of Decision by certified mail upon Coyne Industrial Laundry, Inc. of Syracuse, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Coyne Industrial Laundry, Inc. of Syracuse
132 Cortland Ave.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of March, 1983.

David Parchuck

James A. Augland

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Coyne Industrial Laundry, Inc. of Syracuse :
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 18th day of March, 1983, he served the within notice of Decision by certified mail upon Raymond T. Ryan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Raymond T. Ryan
Coopers and 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
18th day of March, 1983.

David Parchuck

James A. Hupel

P 389 758 724
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Coyne Industrial</u>	
Laundry, Inc. of Syracuse	
Street and No. <u>132 Cortland Ave.</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

P 389 758 725
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Raymond T. Ryan</u>	
Coopers and Lybrand	
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