

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

February 4, 1983

Hubbell Electric, Inc.  
100 Main St.  
New York Mills, NY 13417

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  
James C. Oster  
Groben, Liddy, Cardamone & Gilroy  
185 Genesee St., P.O. Box 423  
Utica, NY 13503  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HUBBELL ELECTRIC, INC.	:	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 September 1, 1975	:	
through August 31, 1978.	:	

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In the Matter of the Petition	:	
of	:	
HUBBELL HIGHWAY SIGNS, 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 March 1, 1978	:	
through February 28, 1981.	:	

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Petitioners, Hubbell Electric, Inc., 100 Main Street, New York Mills, New York 13417 and Hubbell Highway Signs, Inc. P.O. Box 408, New Hartford, New York, filed petitions 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, 1975 through August 31, 1978, with respect to Hubbell Electric, Inc., and March 1, 1978 through February 28, 1978, with respect to Hubbell Highway Signs, Inc. (File Nos. 27985 and 34519).

A formal hearing was held before Julius Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Utica, New York, on March 18, 1982 at 1:15 P.M. Petitioners appeared by Groben, Liddy, Cardamone & Gilroy, Esqs. (James C. Oster, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the charges recorded in the books and records of the petitioners for their share of the cost to obtain telephone services as well as to acquire and maintain vehicles and equipment constituted charges for the "sale" of property and services subject to sales and use tax.

FINDINGS OF FACT

1. On December 18, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Hubbell Electric, Inc. (hereinafter "Electric") based on audit of its records, in the amount of \$28,338.13 plus interest of \$3,773.10 for a total of \$32,111.23 for the periods of September 1, 1975 through August 31, 1978. On April 16, 1980 pursuant to a review, the amount assessed was reduced to \$16,237.34 plus interest of \$3,953.01 for a total of \$20,190.35.

2. On July 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Hubbell Highway Signs, Inc. (hereinafter "Signs") based on an audit of Signs' records in the amount of \$20,631.96 plus interest of \$2,995.81 for a total of \$23,627.77 for the periods March 1, 1978 through February 28, 1981.

3. Petitioner Electric is a wholly owned subsidiary of O.W. Hubbell & Sons, (hereinafter "Hubbell") a subsidiary of Star Route, Inc., which in turn is a wholly owned subsidiary of Michigan General Corporation. Petitioner Signs is also a wholly owned subsidiary of Star Route, Inc. There was an allocation of various items of expense from Hubbell to petitioners for acquiring telephone services and for purchasing and maintaining motor vehicles and equipment. The allocation of these various items was based upon use. Although the petitioners could have purchased their own vehicles, testimony indicated that, as an

accommodation to the lending institution, the line of credit was established through Hubbell. Petitioners also could have purchased their own telephone systems, however, according to the testimony, it would have been inefficient to have a separate system set up for each of the three companies. Therefore, because only one telephone system was purchased, only Hubbell dealt with the telephone company.

4. The taxability of the type of property transferred or services rendered is not at issue. It was the position of the Audit Division that the intercorporate charges recorded on the books of the petitioners constituted taxable transactions.

5. Petitioners filed a consolidated federal income tax return with the other related companies for the periods in issue. Separate New York corporation tax reports were filed, as they were not eligible to file a combined report.

6. Petitioners claim that the agreement with Hubbell for furnishing the items allocated was oral and that Hubbell furnished the items and allocated the expenses for the purpose of evaluating the financial performance of its subsidiaries. It was further claimed that the allocations were merely bookkeeping entries for internal control and did not constitute taxable transactions.

7. Hubbell was not engaged in the business of furnishing the type of property or services at issue to others but was a specialty contractor involved in fabrication and installation of highway safety products, particularly in the area of guardrail type items.

#### 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,... rental or lease..., for a considera-



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Hubbell Highway Signs, 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 3/1/78-2/28/81. :  
: 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 4th day of February, 1983, he served the within notice of Decision by certified mail upon James C. Oster the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James C. Oster  
Groben, Liddy, Cardamone & Gilroy  
185 Genesee St., P.O. Box 423  
Utica, NY 13503

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  
4th day of February, 1983.

David Parchuck

James C. Oster

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Hubbell Electric, 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 9/1/75-8/31/78.	: : : :	: : : :

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 4th day of February, 1983, he served the within notice of Decision by certified mail upon Hubbell Electric, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hubbell Electric, Inc.  
100 Main St.  
New York Mills, NY 13417

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.

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Sworn to before me this  
4th day of February, 1983.

David Parchuck

Annunzio A. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Hubbell Electric, Inc. :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Sales & Use Tax :  
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Sworn to before me this  
4th day of February, 1983.

David Parchuck

James C. Oster

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



tion,... including the rendering of any service, taxable under this article, for a consideration or any agreement therefor."

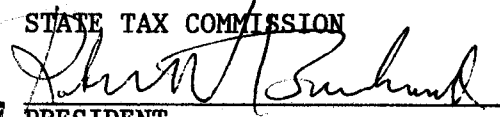
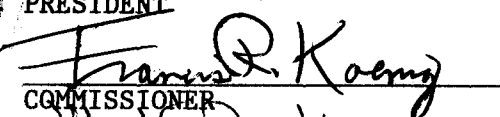
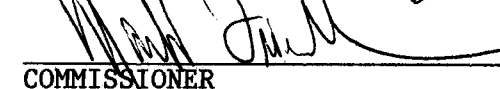
B. That the language of the aforesaid statute "is very broad and inclusive and clearly expresses an intent to encompass most transactions involving transfer or use of commodities in the business world" (Albany Calcium Light Co. v. State Tax Commission, 55 A.D.2d 502 rev'd. on other grounds 44 N.Y.2d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

C. That the fact that petitioners attempted to describe the transactions in issue as intercorporate allocations or bookkeeping entries is immaterial. "Regardless of what one calls [these charges], the effect is the same" (Albany Calcium Light Co., supra). Hubbell provided a service or product for a consideration. Such a transaction is clearly within the meaning and intent of section 1101(b)(5) of the Tax Law. The fact that in this case the corporations were related is of no effect since a sale "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)(g)(i); See also Matter of Central Markets, Inc., State Tax Commission, April 9, 1982; Matter of 107 Delaware Associates, State Tax Commission, March 6, 1981).

D. That the petitions of Hubbell Electric, Inc. and Hubbell Highway Signs, Inc. are denied and the notices of determination and demand for payment of sales and use taxes due issued December 18, 1978 and July 20, 1981 are sustained.

DATED: Albany, New York

FEB 04 1983

STATE TAX COMMISSION  
  
ACTING PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER

**P 389 758 514**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Hubbell Highway Signs Inc</i>	
Street and No. <i>P.O. Box 408</i>	
P.O., State and ZIP Code <i>New Hartford N.Y. 13413</i>	
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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982

**P 389 758 512**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Hubbell Electric Inc</i>	
Street and No. <i>100 Main St</i>	
P.O., State and ZIP Code <i>New York Mills N.Y. 13417</i>	
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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

0, Feb. 1982

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Sent to <i>James C. Oster</i>	
Street and No. <i>Robes, Liddy, Cardamone + G.L. Roy</i>	
P.O., State and ZIP Code <i>185 Genesee St P.O. Box 423 Utica N.Y. 13503</i>	
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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
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