

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

April 15, 1983

The Ralph M. Parsons Company
100 W. Walnut St.
Pasadena, CA 91124

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
Earl H. Doppelt
Paul, Weiss, Rifkind, Wharton & Garrison, Esqs.
345 Park Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
The Ralph M. Parsons Company	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period 6/1/72 - 5/31/75.	:	

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 15th day of April, 1983, he served the within notice of Decision by certified mail upon The Ralph M. Parsons Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Ralph M. Parsons Company
100 W. Walnut St.
Pasadena, CA 91124

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
15th day of April, 1983.

David Parchuck

James A. Highland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
The Ralph M. Parsons Company :
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 6/1/72 - 5/31/75. :
:

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 15th day of April, 1983, he served the within notice of Decision by certified mail upon Earl H. Doppelt the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Earl H. Doppelt
Paul, Weiss, Rifkind, Wharton & Garrison, Esqs.
345 Park Ave.
New York, NY 10022

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
15th day of April, 1983.

David Parchuck

Annice A. Hagelund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THE RALPH M. PARSONS COMPANY	:	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 June 1, 1972	:	
through May 31, 1975.	:	

Petitioner, The Ralph M. Parsons Company, 100 West Walnut Street, Pasadena, California 91124, 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 June 1, 1972 through May 31, 1975 (File No. 10404).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 23, 1978 at 9:15 A.M. Petitioner appeared by Paul, Weiss, Rifkind, Wharton & Garrison, Esqs. (Earl H. Doppelt, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner was relieved of liability for sales and use tax by accepting a Certificate of Capital Improvement.

FINDINGS OF FACT

1. On November 5, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, The Ralph M. Parsons Company, for the period June 1, 1972 through May 31, 1975 in the amount of \$395,219.15, plus penalty and interest of \$132,751.78, for a

total due of \$527,970.93. Petitioner executed a consent extending the time within which to issue an assessment for the period June 1, 1972 through August 31, 1972 to December 20, 1975.

2. The Notice was issued on the basis of taxable sales disclosed on a field audit of petitioner's records. The sales were related to three sub-contracts on a construction project in New York State, which contracts the auditor found were related to the sale and/or installation of tangible personal property.

3. Petitioner is an engineering and construction firm based in Pasadena, California, and engaged in projects worldwide. During the audit period, petitioner had only one construction project in New York State, a liquified natural gas (LNG) facility on Staten Island.

4. Petitioner entered into contracts with Distrigas of New York Corp. (Distrigas) to design and construct the LNG facility. Distrigas gave petitioner a certificate of capital improvement in connection with the project, which was accepted by petitioner in good faith.

5. The facility was designed to operate in the following manner: LNG would arrive by ship at a wharf on the waterfront of the forty acre facility. The LNG, flowing up under pressure of the ship's pumps, would be unloaded through the three marine loading arms on the wharf and flow through a thirty inch diameter pipeline about 2,000 feet to the facility's two large storage tanks. Each tank is 240 feet in diameter and 120 feet high and has concrete walls ten feet thick. The LNG was to be maintained in its liquid state in the tanks at -260° Fahrenheit and at substandard atmospheric pressure of 2½ pounds per square inch. In its liquid state the gas occupies only 1/600th of its normal volume. The LNG was to be pumped out of the tanks, as needed, to the facility's vaporizing units, which would heat and vaporize the gas sufficiently

to reconvert it to the gaseous phase and also heat the gas to the 80° Fahrenheit temperature required for access to the pipelines of the public utilities, Brooklyn Union Gas and Public Service of New Jersey. The facility was also designed to transship LNG out to other facilities through a barge which Distrigas designed and built.

6. The two large tanks were built by Walsh Construction (Walsh). Walsh also installed everything on the tanks and the pipes outside the tanks to a point twenty feet from the tanks. The work performed by Walsh was deemed to be real property and no tax on the Walsh sub-contract is at issue here.

7. Gates Construction Co. (Gates) built the fire boat docking facility. This was also considered to be real property and no tax on the Gates sub-contract is at issue here.

8. Ronel Systems, Inc. (Ronel) installed the piping from the wharf to the tanks and from the tanks to the booster pumps, all the above ground piping. It also installed equipment that petitioner furnished as engineering designer. It purchased the steel work consisting of the pipe bridges between the tanks and the pipe bridges on the wharf and the pipe bridge carrying the Public Service of New Jersey gas line. Ronel purchased the pipe bridges and other structural steel work from a shop. It was assembled in the shop and shipped to the job site where Ronel installed it and made the necessary connections. Ronel did all the instrumentation work. Petitioner, as the engineering designer, furnished all the instruments including the complete pipe. Ronel installed the panel, made the piping connections between it and the field and installed the pneumatic field instruments. Petitioner furnished the stainless steel valves, pipe, fittings (bolts and gaskets excluded), flanges and expansion joints. All other required piping materials including carbon steel piping and stainless steel

bolts and gaskets were furnished by Ronel. The sub-contract with Ronel provided that title to fabricated pipe, pipe spools and clamp-on pipe supports (fabricated units) was to pass to petitioner upon payment of Ronel's invoice which was to include the cost of fabrication of the fabricated units where stainless steel material was furnished by petitioner and the cost of materials and fabrication where Ronel furnished the materials. Ronel also installed the marine loading arms and six booster pumps.

The amended total amount of the Ronel sub-contract was \$4,667,705.94. The contract did not provide a breakdown between material and labor, therefore the entire amount was found to be taxable at 7 percent.

9. A C and S, Inc., Los Angeles, California, was a sub-contractor which provided insulation of equipment and piping. The sub-contract price (per amendment number 4 to the contract) was \$461,031.09, \$281,031.00 of which was for labor and \$180,000.09 of which was for materials. The material charges were found to be taxable at the 3 percent New York City rate and labor charges were found to be taxable at the combined 7 percent State and City rate (note: There were three additional amendments which reflected, inter alia, \$12,000.00 reduction in labor, \$9,197.40 additional labor, \$1,451.16 additional material, \$12,716.96 "sales tax for all materials used", for a final total of \$472,396.61).

10. Lorson Electrical Construction Corporation, New York, New York, was a sub-contractor engaged to construct and/or install electrical facilities. The original "sub-contract price" was \$964,948.00. The contract provided a breakdown between material and labor and also a breakdown between various stages of work so that a distinction could be made between real and personal property. The auditor computed the tax in the same manner as in the A C and S, Inc. sub-contract

(there were 11 amendments to the sub-contract and the amended total of the sub-contract was \$2,329,101.80).

11. The auditor calculated that the tax due on the A C and S, Inc., Lorson Electrical Construction Corporation and Ronel Systems, Inc. sub-contracts was \$397,031.31, less credit of \$1,812.16, for a net of \$395,219.15.

12. The audit was conducted at petitioner's headquarters in California. The auditor never visited the job site on Staten Island.

CONCLUSIONS OF LAW

A. That since petitioner, The Ralph M. Parsons Company, accepted a Certificate of Capital Improvement from its customer, in good faith, it was not required to collect sales tax from said customer (Saf-Tee Plumbing Corporation v. Tully, 77 A.D.2d 1 [3rd Dept. 1980]). Accordingly, it is unnecessary to determine whether the installation of numerous items at issue constituted additions or capital improvements to real property or remained tangible personal property.

B. That the petition of The Ralph M. Parsons Company is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1983

Rodrick W. Allen
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER

P 389 758 807
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>The Ralph M. Parsons Company</i>	
Street and No. <i>100 W. Walnut St.</i>	
P.O., State and ZIP Code <i>Pasadena, CA 91124</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	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 389 758 808
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Earl H. Doppelt</i>	
Street and No. <i>Paul, Weiss, Rifkin, Wharton & Garrison, Esqs.</i>	
P.O., State and ZIP Code <i>345 Park Ave. New York, NY 10022</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	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982