

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

November 10, 1983

Wells Fargo Alarm Services
Division of Baker Protective Services, Inc.
1633 Littleton Rd.
Parsippany, NJ 07054

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
Henry Stow Lovejoy
Sullivan & Cromwell
125 Broad St.
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wells Fargo Alarm Services :
Division of Baker Protective Services, 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 :
3/1/74-2/28/78. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Wells Fargo Alarm Services, Division of Baker Protective Services, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Wells Fargo Alarm Services
Division of Baker Protective Services, Inc.
1633 Littleton Rd.
Parsippany, NJ 07054

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
10th day of November, 1983.

Martha L. Brunelle

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wells Fargo Alarm Services :
Division of Baker Protective Services, 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 3/1/74-2/28/78. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Henry Stow Lovejoy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry Stow Lovejoy
Sullivan & Cromwell
125 Broad St.
New York, NY 10004

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
10th day of November, 1983.

Maucha L. Smuelle

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WELLS FARGO ALARM SERVICES,	:	DECISION
DIVISION OF BAKER PROTECTIVE SERVICES, 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, 1974	:	
through February 28, 1978.	:	

Petitioner, Wells Fargo Alarm Services, Division of Baker Protective Services, Inc., 1633 Littleton Road, Parsippany, New Jersey 07054, 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 March 1, 1974 through February 28, 1978 (File No. 24276).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 8, 1982 at 1:15 P.M., with all briefs to be submitted by March 4, 1983. Petitioner appeared by Sullivan & Cromwell, Esqs. (Henry Stow Lovejoy, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner's charges for installing, repairing and maintaining central station alarm systems constitute charges for protective services, exempt from sales tax.

II. Whether petitioner's charges for local alarm systems constitute charges for protective services, exempt from sales tax.

FINDINGS OF FACT

1. On September 7, 1978, following an audit, the Audit Division issued Notices of Determination and Demands for Payment of Sales and Use Taxes Due under Articles 28 and 29 of the Tax Law to petitioner, Wells Fargo Alarm Services, Division of Baker Protective Services, Inc. ("Wells Fargo"), assessing additional sales tax totaling \$162,637.84 for the periods in question, plus interest, in the following amounts per period:

<u>Period Ended</u>	<u>Additional Tax</u>	<u>Interest</u>
5/31/74	\$ 9,003.92	\$3,228.54
8/31/74	8,771.28	2,958.73
11/30/74	9,591.18	3,031.48
2/28/75	9,296.04	2,740.66
5/31/75	8,656.77	2,368.23
8/31/75	9,756.48	2,461.76
11/30/75	10,220.42	2,361.63
2/29/76	10,499.81	2,203.07
5/31/76	10,729.86	2,023.33
8/31/76	10,989.70	1,838.80
11/30/76	11,282.24	1,648.00
2/28/77	10,977.55	1,370.22
5/31/77	11,343.80	1,174.88
8/31/77	12,127.97	998.37
11/30/77	11,626.31	710.02
1/31/78	7,764.51	309.18

No penalties were assessed. These assessed liabilities were based upon the taxability of all initial fees charged by Wells Fargo to its non-exempt New York customers, as well as the taxability of certain periodic fees as fees with respect to local alarm services.

On May 6, 1977, W.H. Hill, Vice President of Baker Protective Services, Inc., executed a consent extending the period of limitation for assessment of sales and use taxes against petitioner for the taxable period March 1, 1974 through February 28, 1975 to June 20, 1978. On May 2, 1978, a consent further extending the period of limitation to June 20, 1979 was executed by H.M. Stephenson, Vice President and Controller.

2. On or about December 5, 1978, Wells Fargo filed a petition for revision of the determination alleged in the notices of September 7, 1978.

3. On April 30, 1979, a pre-hearing conference pursuant to section 601.4 of the State Tax Commission's Rules of Practice and Procedure was held. At this meeting, it was agreed that certain periodic fees that had previously been reported as revenues from local alarm services were actually revenues from central station alarm services. As a result, the amount of tax alleged to be owing was reduced by \$19,644.54. Remaining at issue, therefore, are petitioner's receipts from the installation, repair and maintenance of central station alarm systems and local alarm systems; periodic service charges for central station alarm systems, but for New York City sales tax purposes only; and periodic service charges for local alarm systems.

4. During the periods in question, petitioner was engaged in the business of providing central station and local alarm services to customers to protect property and persons.

5. A central station alarm system is one which signals an intrusion or fire on the property protected via leased telephone lines to a central station monitoring facility operated by Wells Fargo. In providing central station alarm service during the periods in question, Wells Fargo designed, installed and maintained alarm systems, monitored all signals from the systems and responded to alarms. In addition, Wells Fargo made periodic inspections of the systems and made such repairs and adjustments as were necessary for the proper operation and maintenance of the systems in good working order. All these actions were necessary to providing the protective service afforded by a central station alarm service. Each entire central station alarm system installed by Wells Fargo, including all devices, instruments, appliances and

all cabinets, conduits, connections, foils, screens, springs, tubing, wires and other materials associated therewith, remained by contract the personal property of Wells Fargo.

6. A local alarm system is one which signals an intrusion on the property protected and which has no connection by wire or by any other means with a central station operated by Wells Fargo. In providing local alarm service during the periods in question, Wells Fargo installed and maintained local alarm systems, made periodic inspections of the systems and made such repairs and adjustments as were necessary for the proper operation and maintenance of such systems in good working order. All these actions were necessary to providing the protective service afforded by a local alarm service. Each entire local alarm system installed by Wells Fargo, included all devices, instruments, appliances and all cabinets, conduits, connections, foils, screens, springs, tubing, wires and other materials associated therewith, remained by contract the personal property of Wells Fargo.

7. Each alarm system installed by Wells Fargo is specifically designed for the customer's needs. A specific alarm system is designed by a trained Wells Fargo sales representative after inspection of the premises and consultation with the customer concerning the customer's specific protective needs. The sales representative selects the type of alarm system and outlines the number, placement and kind of sensing devices needed to provide the protective service. The sales representative will quote a price for the specific service. Thereafter, in most cases an installation supervisor visits the premises and reviews the sales representative's proposal. The installation supervisor either approves the proposal or makes alterations. The system is then installed

according to the approved plan, and the installation manager will certify the system or approve it for certification for insurance purposes, if required.

8. After installation of an alarm service, Wells Fargo employees monitor the system (in the case of central station services), service the equipment, respond to alarms for central station systems and run tests on the system and on the leased lines connecting the system with the central station.

9. The customer agreement for either a central station alarm system or a local alarm system is for a term of five years, automatically renewed for successive periods of one year unless and until written notice of termination is given by either party. Each agreement provides in relevant part:

"Subscriber hereby authorizes Wells Fargo to remove, or upon written notice to Subscriber, to abandon said systems, in whole or in part, including all devices, instruments, appliances, and all cabinets, conduits, connections, foil, screens, springs, tubing, wires and any other materials associated therewith, upon termination of this agreement by lapse of time, default in the payment of any moneys due hereunder, or otherwise, without any obligation to repair or redecorate any portion of Subscriber's premises..."

10. The central station alarm system and local alarm system customers are billed in two steps. First, there is an initial fee (the "installation charge") for the protective services. This fee represents a partial recovery for Wells Fargo of the costs of assessing a customer's protective needs, designing an appropriate alarm service and installing the system. The initial billing also includes a charge for the first period of protective service. Thereafter, Wells Fargo charges a periodic fee (a "service charge"), which represents the continuing protective service costs. Both billings are in lump sums and are not itemized or particularized in any manner.

11. During the periods in question, Wells Fargo charged the following initial fees and fees for extraordinary maintenance and nuisance runs for alarm

services to New York subscribers who were not exempt organizations, and paid the following amounts of New York use tax with respect to property installed on the premises:

<u>Period Ended</u>	<u>Revenues</u>	<u>Use Taxes</u>
5/31/74	\$124,315.05	\$1,650.48
8/31/74	124,315.05	2,556.80
11/30/74	124,315.08	2,275.65
2/28/75	122,459.90	2,233.86
5/31/75	121,432.34	2,641.50
8/31/75	121,432.34	1,728.52
11/30/75	121,432.37	1,492.18
2/29/76	122,809.81	1,269.64
5/31/76	123,448.56	1,143.74
8/31/76	123,448.56	916.12
11/30/76	123,448.59	907.42
2/28/77	168,430.74	3,875.99
5/31/77	190,921.83	4,798.63
8/31/77	190,921.83	4,027.72
11/30/77	190,921.86	3,997.20
1/31/78	127,381.24	2,651.40

12. Submitted with petitioner's brief were eleven proposed findings of fact all of which have been adopted, with the exception of proposed finding "8" which is irrelevant and unnecessary for purposes of this decision.

CONCLUSIONS OF LAW

A. That the initial fees petitioner billed to its central station alarm system customers, which fees encompassed a portion of the costs of designing and installing the alarm system and also a charge for the first period of protective service, are taxable receipts pursuant to Tax Law section 1105(c)(3). Said provision imposes sales tax upon the receipts from the sale of the services of installing, maintaining, servicing or repairing tangible personal property; exception is made for the service of installing tangible personal property which, when installed, constitutes an addition or capital improvement to real property, property or land (section 1105(c)(3)(iii)). The installation of the alarm systems herein was pursuant to a contract which empowered petitioner upon

the termination thereof to remove the installed equipment; moreover, by the terms of the contract, the entire system was and remained the personal property of Wells Fargo. Consequently, the installation charges are taxable under section 1105(c)(3). Matter of Central Office Alarm Co. v. State Tax Comm., 58 A.D.2d 162 (3d Dept.).

Tax Law section 1132(c) creates a presumption that all receipts for (among other things) services of the type mentioned in section 1105(c) are subject to tax and places the burden of proving the nontaxability of any receipt upon the person required to collect tax or the customer. Petitioner has demonstrated that some portion of the initial fee is for protective services but has not come forward with sufficiently detailed evidence to permit an allocation of the fee between taxable (installation) and nontaxable (protective) services. The entire initial fee must therefore be considered taxable.

B. That petitioner's periodic charges to its central station alarm system customers for protective service are taxable for New York City sales tax purposes, pursuant to section 1212-A(h)(2)(i)(B) of Article 29.

C. That all charges to petitioner's local alarm system customers are subject to sales tax, as receipts for the use of tangible personal property and as receipts from the sale of the services of installing, maintaining, servicing and repairing tangible personal property. As decided in Matter of ADT Company, Inc. (State Tax Comm., March 6, 1981):

"...the annual service charges for local alarm service are not exempt from sales tax as a guard and protective service. That a decal on the premises may induce a chimera in the mind of an intruder that a guard may be alerted does not alter the fact that intrusion on the premises merely triggers an alarming noise. The protective service is the determinant factor. Holmes Electric Protective Co. v. McGoldrick, 262 A.D. 514 (1st Dept. 1941), 30 N.Y.S.2d 589, aff'd without opinion, 288 N.Y. 635 (1942). Without protective service, the entire service charge is subject to sales tax for the use of tangible personal property."

D. That the petition of Wells Fargo Alarm Services, Division of Baker Protective Services, Inc. is denied, and the Notices of Determination and Demands for Payment of Sales and Use Taxes Due issued on September 7, 1978, reduced by agreement of the parties as stated in Finding of Fact "3", are sustained.

DATED: Albany, New York

NOV 10 1983

STATE TAX COMMISSION

Richard G. Chm
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Anderson
COMMISSIONER

P 470 315 145

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Services</i>	
<i>Wells Fargo Alarm</i>	
Street and No. <i>1633 Lullaton Rd.</i>	
P.O., State and ZIP Code <i>Paris, Pa., Pa. 07054</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 470 315 146

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Henry Stow Lowery</i>	
<i>125 Broad St.</i>	
Street and No. <i>NY, NY, 10004</i>	
P.O., State and ZIP Code	
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