

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Oswego Vacuum Cooling Co. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/79 - 5/31/82. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 7th day of November, 1985, he served the within notice of Decision by certified mail upon Oswego Vacuum Cooling Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Oswego Vacuum Cooling Co.
300 West 1 Street
Oswego, NY 13126

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
7th day of November, 1985.

David Parchuck

Bonnie A. Deane
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

Bennie A. Haglund
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 7, 1985

Oswego Vacuum Cooling Co.
300 West 1 Street
Oswego, NY 13126

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Richard C. Mitchell
52 E. Cayuga St.
Oswego, NY 13126
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
OSWEGO VACUUM COOLING CO., 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 June 1, 1979	:	
through May 31, 1982.	:	

Petitioner, Oswego Vacuum Cooling Co., Inc., 300 West 1st Street, Oswego, New York 13126, 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, 1979 through May 31, 1982 (File No. 41647).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on November 27, 1984 at 1:15 P.M., with all briefs to be submitted by March 1, 1985. Petitioner appeared by Richard C. Mitchell, Jr., Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether certain payments made by petitioner to a related corporation were subject to sales or use tax.

FINDINGS OF FACT

1. Petitioner, Oswego Vacuum Cooling Co., Inc., was engaged in the service of vacuum cooling lettuce. Petitioner shared the business premises with a related corporation, Vacuum Cooling Equipment Co., Inc., (VCE). Each corporation owned equipment that was used in the cooling process. Petitioner

owned the vacuum chamber and air compressor. VCE owned the boiler, steam jet and water pump.

On June 30, 1967, petitioner entered into an agreement with VCE which provided that VCE was to supply petitioner from its portable steam power plant with refrigeration necessary to cool the contents of the trailers and loads on flat-bed trucks placed into the chamber. The term of the agreement was initially for five years; however, said agreement was renewed from time to time and was in effect during the period at issue herein.

2. Farmers packaged lettuce from their fields in crates or cartons which were then put on trucks or in trailers for delivery to petitioner for cooling. Each truck or trailer was taken inside the vacuum cooling chamber, the doors of the trailers were opened and the cooling process was begun. The process involved lowering the atmospheric pressure in the chamber, which in turn lowered the boiling point of the moisture in the lettuce from approximately 80 degrees to 34 degrees. After the cooling process was completed, the vehicle delivered the lettuce to wholesale markets or retail stores, where it was trimmed and wrapped for sale to the consumer. Petitioner did not provide any storage service.

3. Petitioner charged \$.50 per crate for the cooling service. VCE invoiced and received payment of \$.35 per crate from petitioner in accordance with their agreement. The invoice was prepared weekly.

4. On October 20, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period June 1, 1979 through May 31, 1982 for taxes due of \$5,707.98, plus interest of \$1,387.45, for a total of \$7,095.43.

5. On audit, the Audit Division determined that the payments by petitioner to VCE were taxable as the rental of equipment. Total payments for the audit period

of \$142,699.38 were obtained from monthly summaries recorded in the general ledger and the taxes due of \$5,707.98 were computed thereon. Alternatively, the Audit Division argued that VCE was furnishing petitioner with a taxable service under section 1105(b) of the Tax Law.

CONCLUSIONS OF LAW

A. That section 1105(b) of the Tax Law provides for the imposition of sales tax on "(t)he receipts from every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature,...". The agreement between petitioner and VCE specifically provided that VCE agreed to furnish refrigeration necessary for petitioner's cooling process. Accordingly, petitioner purchased a refrigeration service under section 1105(b) of the Tax Law.

B. That, likewise, petitioner was providing a refrigeration service to its customers. Petitioner purchased the refrigeration service from VCE for resale and therefore such purchases are not subject to the tax imposed under section 1105(b) of the Tax Law.

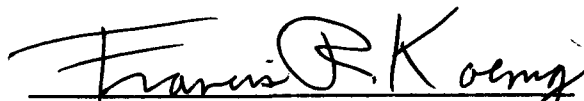
C. That the petition of Oswego Vacuum Cooling Co., Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 20, 1982 is cancelled.

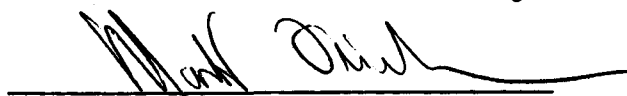
DATED: Albany, New York

STATE TAX COMMISSION

NOV 07 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 153 387 670

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to <i>Cosway Vacuum Cleaning Inc.</i>	
Street and No. <i>500 W. 1 St.</i>	
P.O., State and ZIP Code <i>Chicago, IL 60612</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	

P 153 387 671

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to <i>Richard C. Mitchell</i>	
Street and No. <i>58 E. Chicago St.</i>	
P.O., State and ZIP Code <i>Chicago, IL 60612</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	