

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Adirondack Alternate Energy :  
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 12/1/78-8/31/81. :  
:

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AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Adirondack Alternate Energy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Adirondack Alternate Energy  
Edinburg Rural Station  
Northville, NY 12134

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  
28th day of January, 1986.

David Parchuck

Connie Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York :

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David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he served the within notice of Decision by certified mail upon Dennis J. Phillips, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dennis J. Phillips  
McPhillips, Fitzgerald, Meyer & McLenithan  
288 Glen St. - P.O. Box 309  
Glens Falls, NY 12801

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 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  
28th day of January, 1986.

David Parchuck

Connie A. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

January 28, 1986

Adirondack Alternate Energy  
Edinburg Rural Station  
Northville, NY 12134

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  
Dennis J. Phillips  
McPhillips, Fitzgerald, Meyer & McLenithan  
288 Glen St. - P.O. Box 309  
Glens Falls, NY 12801  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ADIRONDACK ALTERNATE ENERGY	:	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 December 1, 1978	:	
through August 31, 1981.	:	

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Petitioner, Adirondack Alternate Energy, Edinburg Rural Station, Northville, New York 12134, 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 December 1, 1978 through August 31, 1981 (File No. 41314).

A formal hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on May 22, 1985 at 9:15 A.M., with all briefs to be submitted by October 1, 1985. Petitioner appeared by McPhillips, Fitzgerald, Meyer & McLenithan, Esqs. (Dennis J. Phillips, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether the total package price which petitioner charges its customers pursuant to its sales contracts is subject to the imposition of sales tax.

II. If not, whether petitioner's allocation of 65 percent of the total package price to the sale of materials and 35 percent to the performance of engineering services is a proper allocation.

FINDINGS OF FACT

1. On September 10, 1982, following a field audit, the Audit Division issued to Adirondack Alternate Energy (hereinafter "petitioner") a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period December 1, 1978 through August 31, 1981 in the amount of \$20,694.55, plus interest of \$4,185.05, for a total amount due of \$24,879.60.

2. Petitioner sells solar energy-efficient home packages. Petitioner sells materials and advises the customer as to proper methods of construction, but does not construct the home. Customers are billed in a lump sum for the materials and consultation services; the sales contract entered into between petitioner and a customer does not separately state what portion is for materials. Although the Audit Division characterized petitioner's business as retail and engineering, it held the entire package price to be subject to sales tax since the alleged non-taxable services were not separately stated in the sales contract.

3. The work performed by petitioner for its customers includes, inter alia, the following:

- a. Developing a "line sketch", a simple drawing representing a prospective customer's idea of what their home will be like;
- b. Site preparation orientation;
- c. Meetings with customers concerning their hiring of various subcontractors and their dealings with bankers and building inspectors;
- d. Preparing revised line sketches and tentative pricing for cost of package;
- e. Exterior and interior dimension analysis and starting actual design of systems that go into the house;

- f. Preparing engineered blueprints which are given to draftsmen;
  - g. Submitting blueprints to general contractor, all subcontractors and to local code approving agency to assist customer in obtaining building permit;
  - h. Ordering of materials from major suppliers;
  - i. Making specific job site visitations and communicating with customer's contractors every two to three days;
  - j. Inspecting job, training contractors about next phase of construction.
4. The customer selects the workmen. Petitioner claims that, if, on inspection, it determines that work has not been properly performed, petitioner has authority to require customer's workmen to redo work and may also require customer to replace workmen. However, no such authority is extended to petitioner in the provisions of the written sales contract entered into between petitioner and a customer.
5. Petitioner maintains no inventory of materials, but rather purchases the materials directly from the supplier. Petitioner pays no sales tax on its purchase of the materials. Petitioner hires a contract trucker to deliver the materials to a job site. The materials purchased by petitioner and furnished to the customer are for the finished and insulated shell of the building only.
6. Petitioner pays sales tax on an estimated percentage rather than collecting sales tax from its customers on specific materials included in each contract. Petitioner computes its sales tax liability based on an allocation formula which provides that 65 percent of the total contract price is related to furnishing materials and 35 percent to providing engineering services. Petitioner, therefore, pays sales tax on 65 percent of the total contract price. Petitioner offered no credible proof that materials are sold to customers without profit.

7. Petitioner does not separate the cost of materials from the engineering services when it bills a customer because it is petitioner's position that it passes the materials on to the customer without profit and that, if materials and services were separately stated, petitioner's profit margin would automatically be revealed.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax upon the "receipts from every retail sale of tangible personal property...". Receipts are defined by section 1101(b)(3) of the Tax Law, in part, as the "amount of the sale price of any property and the charge for any service taxable under this article,...".

B. That petitioner purchased the materials for the finished and insulated shell of the customer's home and resold the materials to its customers at cost plus 35 percent which petitioner attributes to the furnishing of engineering services. Although petitioner does perform some engineering services for its customers, it provides various other services in conjunction with the sale of its solar energy-efficient home package such as, among others, preparing customers for dealings with bankers, building inspectors, contractors and subcontractors. These services are a significant part of and are directly related to the sale of petitioner's package and, as such, cannot be extricated from the total receipt and excluded from tax.

C. That the 35 percent fee added by petitioner was, in essence, a profit or commission on its sale of its solar energy-efficient home package and, as such, constituted a part of the selling price of tangible personal property subject to tax (Matter of T. K. Design, Inc., State Tax Commission, June 28, 1985).

D. That if the bill rendered to the customer makes no separate statement of the otherwise non-taxable and taxable charges, the total charge is subject to tax. 20 NYCRR 527.1(b); La Cascade, Inc. v. State Tax Commission, 91 A.D.2d 784.

E. That in view of Conclusion of Law "D", supra, Issue II herein is rendered moot.


F. That the petition of Adirondack Alternate Energy is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 10, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



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**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

Sent to <i>Thomas J. Phillips</i>	
Street and No. <i>McPhillip Hazard Meyer</i>	
P.O., State and ZIP Code <i>288 Glen St</i>	
Postage <i>P.O. Box 309</i>	\$
Certified Fee <i>Postage NY 12801</i>	
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 684 313 172

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

Sent to <i>Edmund Altemate</i>	
Street and No. <i>Edmund Altemate Station</i>	
P.O., State and ZIP Code <i>Metairie NY 13134</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	