

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Coinmach Industries Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law for the :
Period 7/1/81 - 5/31/84. :

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, 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 15th day of October, 1986, he/she served the within notice of Decision by certified mail upon Coinmach Industries Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Coinmach Industries Corp.
55 Lumber Road
Roslyn, NY 11576

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
15th day of October, 1986.

Janet M. Snay

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

• STATE TAX COMMISSION

In the Matter of the Petition :
of
Coinmach Industries Corp. :

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for Redetermination of a Deficiency or Revision :
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under Article(s) 28 & 29 of the Tax Law for the :
Period 7/1/81 - 5/31/84.
_____ :

State of New York :
ss.:
County of Albany :


• David Parchuck/Janet M. Snay, 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 15th day of October, 1986, he served the within notice of Decision by certified mail upon Joseph Farber, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Farber
c/o URAC Corp.
119 North Park Ave. - Suite 406A
Rockville Centre, NY 11570

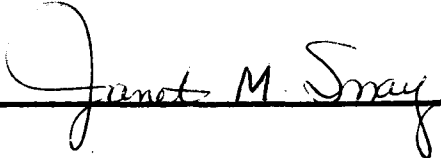
• and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
15th day of October, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



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

October 15, 1986

Coinmach Industries Corp.
55 Lumber Road
Roslyn, NY 11576

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Joseph Farber
c/o URAC Corp.
119 North Park Ave. - Suite 406A
Rockville Centre, NY 11570

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
COINMACH INDUSTRIES CORP.	:	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 July 1, 1981	:	
through May 31, 1984.	:	

Petitioner, Coinmach Industries Corp., 55 Lumber Road, Roslyn, New York 11576, 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 July 1, 1981 through May 31, 1984 (File No. 56218).

A hearing was held before Sandra F. Heck, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 12, 1986 at 1:30 P.M., with additional documentary evidence to be submitted by July 14, 1986. Petitioner appeared by Joseph Farber, Esq. The Audit Division appeared by John P. Dugan, Esq. (Michael Infantino, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund of sales tax paid upon gas and electricity used in the operation of a coin-operated laundry facility located in a residential apartment building.

FINDINGS OF FACT

1. On June 19, 1984, petitioner, Coinmach Industries Corp., filed an application for credit or refund of state and local sales or use tax in the amount of \$281.70 for the period July 1, 1978 through May 31, 1984. The basis of the claim was that petitioner had paid sales tax on energy services purchased

solely for residential purposes and that such purchases were exempt from sales tax by virtue of section 1105-A of the Tax Law.

2. On September 4, 1984, the refund claim was denied in full by the Central Sales Tax Section of the Audit Division. The denial was based upon an Advisory Opinion issued by the Technical Services Bureau on April 17, 1984.

The Advisory Opinion stated, in part, that:

"as the gas and electricity at issue is used in the conduct of a trade or business it is not used for residential purposes within the meaning of Section 1105-A of the Tax Law. The receipts from the sale of such gas and electricity are therefore subject to the tax imposed under Section 1105(b) of the Tax Law."

3. Petitioner is engaged in the business of providing coin-operated washing machines and dryers to various residential apartment buildings.

4. The particular refund claim at issue is in regard to the sales tax on electricity and gas supplied to five coin-operated washing machines and four coin-operated dryers in the basement laundry room of a residential apartment building located at 404 East 66th Street in New York City. The 155 tenants who reside in the apartment building are prohibited from maintaining their own washers or dryers in their apartments. The laundry facilities in the building are for the exclusive use of the tenants.

5. Petitioner is responsible for maintaining, servicing and replacing the washers and dryers.

6. Petitioner has its own gas and electric meters installed in the laundry facility and the gas and electric bills are directly rendered to and paid by petitioner. The landlord is responsible for paying for the service of the hot water supplied to the machines.

7. The landlord receives a commission from petitioner based on the usage of the machines. Consequently, when petitioner periodically removes the coins

from the machines, a certain percentage of the proceeds removed is remitted to the landlord.

8. Petitioner paid sales and use tax pursuant to section 1105(b) of the Tax Law for the gas and electricity used to power the washing machines and dryers.

9. Petitioner contends that the Audit Division does not assert tax on gas and electricity used in apartment house laundry rooms where the owner of the building owns and maintains the washing machines and dryers, and that it should not make any difference that petitioner, rather than the landlord, owns and maintains the machines at issue.

CONCLUSIONS OF LAW

A. That section 1105(b) of the Tax Law provides for a sales tax on the receipts from every sale, other than for resale, of gas, electricity and certain other utilities.

B. That section 1105-A(a) of the Tax Law effectively eliminated the New York State sales tax on the sale of natural gas, electricity and certain other utilities "used for residential purposes". (Section 1105-A does not affect the localities' taxes imposed under Article 29 of the Tax Law nor the special taxes imposed by sections 1107 or 1108 of the Tax Law.)

C. That the gas and electricity purchased by petitioner were used by it in the conduct of a trade or business and such use did not constitute a use for residential purposes within the meaning of section 1105-A(a) of the Tax Law.


D. That the petition of Coinmach Industries Corp. is denied and the denial of refund dated September 4, 1984 is sustained in full.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

Form 3800, June 1985

Sent to Cainmloch Industries Corp.	
Street and No. 55 Lumber Road	
P.O., State and ZIP Code Roslyn, N.Y. 11576	
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 319 117 381

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

Form 3800, June 1985

Sent to Joseph Faiber	
Street and No. c/o URAC Corp. Suite 119 North Park Ave. 104	
P.O., State and ZIP Code Rockville Centre, N.Y. 11570	
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	



New York State Tax Commission

TAX APPEALS BUREAU

W.A. Harriman Campus
Albany, New York 12227

October 29, 1986

Frederick Collins
Officer of 2133 Broadway PM Corp.
516 Old Dover Road
Morris Plains, NJ 07760

Re: File No. 64240

Dear Mr. Collins:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 1138 of the Tax Law, any proceeding in court to review this decision must be commenced 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 the undersigned at the above address.

Very truly yours,

Joseph Chyrywat
Supervisor of Tax Conferences

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Frederick Collins	:	<u>DEFAULT ORDER</u>
Officer of 2133 Broadway PM Corp.	:	86-C-26
for Redetermination of a Deficiency or Revision of	:	
a Determination or Refund of	:	
Sales and Use Tax under Article 28 & 29	:	
of the Tax Law for the Period 12/01/78 - 11/30/79.	:	

Petitioner(s) Frederick Collins, Officer of 2133 Broadway PM Corp. filed a petition for redetermination of a deficiency or revision of a determination or refund of Sales and Use Tax under Article 28 & 29 of the Tax Law for the Period 12/01/78 - 11/30/79. File No. 64240.

A pre-hearing conference on the petition was scheduled before James Domanico, at the offices of the State Tax Commission, Two World Trade Center, Room 65-51 New York, New York 10047 on Wednesday, September 10, 1986 at 9:00 a.m. Notice of said pre-hearing conference was given to petitioner(s). Petitioner(s) did not appear at the pre-hearing conference. A default has been duly noted.

Now on motion of the State Tax Commission, it is

ORDERED that the petition of Frederick Collins, Officer of 2133 Broadway PM Corp. be and the same is hereby denied.

DEFAULT ORDER
ADOPTED BY THE STATE TAX COMMISSION
ALBANY, NEW YORK
OCTOBER 29, 1986

P 319 120 267

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to	Frederick Collins
Street and No.	Off. of 2133 Broadway
P.O. Box and ZIP Code	Fm Corp.
Postage	\$ 576 Old Dover Rd.
Certified Fee	Morris Plains, NJ 07762
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	