

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
BALAN PRINTING, INC.	:	DETERMINATION
for Revision of Determinations or for Refunds	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period September 1, 1974	:	
through May 31, 1980.	:	

Petitioner, Balan Printing, Inc., 5377 Kings Highway, Brooklyn, New York 11203, filed a petition for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1974 through May 31, 1980 (File No. 800161).

On May 5, 1987, petitioner, through its duly authorized representative, waived a hearing and agreed to submit the case for determination based on the Division of Taxation file and a memorandum of law to be submitted by petitioner by July 24, 1987. After due consideration of the record, Daniel J. Ranalli, Administrative Law Judge, hereby renders the following determination.

ISSUE

Whether the Audit Division's treatment of certain purchases made by petitioner as machinery and equipment used in its printing business, as opposed to purchases for resale, was a violation of the equal protection clauses of the New York State and United States Constitutions.

FINDINGS OF FACT

1. Petitioner, Balan Printing, Inc., was engaged in a printing business located at 5377 Kings Highway, Brooklyn, New York.
2. On April 10, 1981, as the result of an audit, the Audit Division issued two notices of determination and demands for payment of sales and use taxes due against petitioner covering the period September 1, 1974 through May 31, 1980 for taxes due of \$22,582.40 plus minimum interest of \$6,172.60 for a total amount due of \$28,755.00.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period September 1, 1974 through August 31, 1977 to June 20, 1981.

4. The audit disclosed additional sales and use taxes due of \$31,414.28. Petitioner agreed to and remitted payment of \$8,831.88 in tax plus interest. The balance of \$22,582.40 represented tax determined due on purchases of various types of printing plates. The plates were considered production equipment by the Audit Division and were held subject to the four percent New York City tax imposed under section 1107 of the Tax Law. There was no tax assessed on plates purchased in periods prior to December 1, 1975.

5. In May 1980 the State Tax Commission instituted a policy which accorded equal treatment to all items purchased for use in production by printers. The following categories were deemed to be machinery and equipment:

- (a) Offset plates, photoengraving plates (aluminum, bimetal, trimetal, deep etch, paper, photopolymer, plastic, rubber, zinc) and glass screens.
- (b) Lithographic positives, negatives, color separations and film (exposed and unexposed).
- (c) Composition, typography and progressive proofs.
- (d) Artwork, illustrations, layouts, drawings, paintings, mechanicals, overlays, designs, photographs and pasteups.

Such machinery and equipment, when used in the production of property for sale, are not subject to New York State sales tax but are subject to New York City sales tax. Since July 1, 1977, however, New York City has allowed a credit against the City corporation tax and unincorporated business tax for the City sales tax paid on the purchases of such machinery and equipment.

6. On January 18, 1979, the State Tax Commission adopted a policy limiting the assessment periods of printing industry audits involving the City sales tax on items included in categories (a) and (b), supra, to those periods beginning on or after December 1, 1975. Since the sales tax paid on purchases of machinery and equipment is eligible for a credit against City

general business taxes with respect to purchases made on or after July 1, 1977, printers were subject to City sales tax, for which there was no corresponding general business tax credit, on purchases of items in categories (a) and (b) during the period from December 1, 1975 to July 1, 1977. Prior to the establishment of the May 1980 policy, purchases of items in category (c) had been excluded from tax as purchases for resale and, therefore, there was no tax impact on such purchases.

7. In Matter of B & B Enterprises, Inc. (State Tax Commission, February 6, 1985), it was held that purchases of printing, paper, typography etc. used to produce "Stagebills" were for resale and therefore not subject to sales and use taxes. This holding was overruled in Matter of Martin Lithographers, Inc. (State Tax Commission, December 2, 1985) which held that, in order to prevent inconsistency of sales tax treatment, the policy of limiting the assessment periods of printing industry audits would be extended to all the items considered to be machinery and equipment set forth in Finding of Fact "5", including items in category (d). The Audit Division followed this holding with respect to all printing industry audits.

SUMMARY OF PETITIONER'S POSITION

8. Petitioner argued that it received inequitable treatment compared to that given B & B Enterprises, Inc. and as a result incurred the expense of unpaid sales tax and interest charges not borne by B & B Enterprises, Inc. Petitioner alleged that such unequal treatment is unjust and unlawful discrimination and a violation of the New York State and United States Constitutions, specifically the equal protection clauses.

CONCLUSIONS OF LAW

A. That there was no unjust and unlawful discrimination against petitioner which would violate the equal protection clauses of the United States or New York State Constitutions. Administrative agencies are free to correct a prior erroneous interpretation of the law by overruling a past decision. (Matter of Charles A. Field Delivery Service, Inc., 66 NY2d 516.) A specific conclusion in Matter of B & B Enterprises, Inc. (State Tax Commission, February 6, 1985) was found to be erroneous and was clearly overruled in Matter of Martin

Lithographers, Inc. (State Tax Commission, December 2, 1985). The Commission explained in Martin Lithographers that it was extending a longstanding policy so as to prevent inconsistency in tax treatment. It further explained that to the extent such holding was inconsistent with its decision in B & B Enterprises, such decision was overruled. This the Commission was entitled to do and petitioner's arguments to the contrary are without merit.

B. That the petition of Balan Printing, Inc. is denied and the notices of determination and demands for payment of sales and use taxes due issued April 10, 1981 are sustained.

DATED: Albany, New York
April 17, 1991

ADMINISTRATIVE LAW JUDGE