

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LESLEY ADVERTISING ASSOCIATES, 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, 1976	:	
through August 31, 1979.	:	

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Petitioner, Lesly Advertising Associates, Inc., 20 Villard Avenue, P.O. Box 468, Hastings-on-Hudson, New York 10706, 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, 1976 through August 31, 1979 (File No. 30402).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 14, 1985 at 1:15 P.M., with all briefs to be submitted by July 15, 1985. Petitioner appeared by its President, Joe Lesly. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner was required to collect sales tax on charges for artwork, designs, illustrations and the like which were used by petitioner to produce printed advertising materials.

FINDINGS OF FACT

1. Petitioner, Lesly Advertising Associates, Inc. was an advertising agency engaged in the preparation and production of advertising materials. It also prepared and placed media advertisements.

2. On March 20, 1980, 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, 1976 through August 31, 1979 for taxes due of \$33,728.53, plus interest of \$5,763.83, for a total of \$39,492.36.

3. Joe Lesly, the President of petitioner, executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1976 through May 31, 1979 to June 20, 1980.

3. An audit of petitioner's books and records disclosed additional sales and use taxes due as follows:

(a) Disallowed nontaxable sales	\$32,639.36
(b) Recurring expense purchases	783.96
(c) Fixed assets	<u>305.21</u>
	\$33,728.53

The disallowed nontaxable sales represented sales of artwork, design and retouching services.

4. At a pre-hearing conference held on December 11, 1980, it was agreed by the Audit Division and petitioner to have the matter held in abeyance pending the outcome of the Department's study of the application of the sales tax law to the advertising industry. The conference was reconvened on January 25, 1984 at which time new guidelines on the advertising industry had been presented by the Audit Division. It was agreed that the Audit Division would perform additional audit work and revise the assessment to conform with the new policy. Petitioner no longer had the records available for the period that was audited. Therefore, based on an examination of petitioner's then current records, the Audit Division determined that seventy-five percent of the sales disallowed on audit were in fact nontaxable under the new guidelines. There was also an adjustment to the expense purchases. Accordingly, the assessment was reduced as follows:

(a) Disallowed nontaxable sales	\$8,159.64
(b) Recurring expense purchases	646.12
(c) Fixed Assets	305.21
	<hr/> \$9,110.97

5. At the hearing, petitioner conceded its liability for the taxes determined in (b) and (c) above.

6. The following policy effective June 1, 1983, was used by the Audit Division in making the revisions to the original assessment:

Media

The advertising agency is required to pay appropriate tax on purchases (artwork, photography, etc.) necessary to prepare a mechanical, layout, etc. and the advertising agency should collect no tax on the total charge to its customer.

Printed Material

The advertising agency is required to pay appropriate tax on purchases of artwork, etc. and collect appropriate tax on the total cost of the printing job to its customer.

The Audit Division determined that seventy-five percent of the artwork, designs, sketches and illustrations produced by petitioner's employees were used to place advertisements in publications for sale (media advertising).

7. Petitioner argued that during the period covered by the audit, there were no definitive guidelines to follow with respect to the application of the sales tax law to the advertising industry. Petitioner further argued that the State changed its interpretation of the taxability of certain items three times after the guidelines were first established. Because of confusion as to the activities of advertising agencies, petitioner wanted a new audit for a period after the final guidelines were in effect and have the results of the new audit replace the audit at issue herein.

CONCLUSIONS OF LAW

A. That petitioner's sales of printed advertising materials were subject to the tax imposed under section 1105(a) of the Tax Law. Petitioner was required to collect tax on the total selling price of the printed materials, including any separately stated charges for artwork, design, illustrations, etc.

B. That petitioner failed to collect sales tax from its customers on the types of charges referred to in Conclusion of Law "A", supra and therefore, it is liable for such tax pursuant to section 1133(a) of the Tax Law.

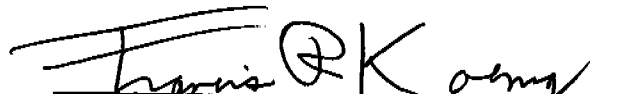
B. That the petition of Lesly Advertising Associates, Inc. is granted to the extent that the additional taxes due are reduced to \$9,110.97 (see: Finding of Fact "4", supra ); the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 20, 1980; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER