

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
VISTA PUBLICATIONS, 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, 1978	:	
through May 31, 1981.	:	

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Petitioner, Vista Publications, Inc., 9600 West Sample Road, Coral Springs, Florida 33065, 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, 1978 through May 31, 1981 (File No. 36233).

A formal hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1984 at 10:45 A.M. Petitioner appeared by Kraut & Resnick, Esqs. (Robert W. Resnick, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUES

I. Whether the receipts from the sale of circulation lists in connection with the purchase of the assets of a magazine publisher were subject to tax.

II. If so, whether the purchase price specified in the Purchase and Sale Agreement is the proper amount for determining the taxes due.

#### FINDINGS OF FACT

1. On July 24, 1981, the Audit Division, as the result of an audit of Rayon Publishing Corporation ("Rayon"), issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the petitioner, Vista

Publications, Inc. ("Vista"), for taxes due of \$17,346.28, plus interest of \$1,406.74, for a total due of \$18,753.02 for the period June 1, 1978 through May 31, 1981. The Notice provided the following explanation:

"The following taxes are determined to be due from Rayon Publishing Corp. and represents (sic) your liability, as purchaser, in accordance with Section 1141(c) of the Sales Tax Law."

On the same day, the Audit Division also issued notices for the same amount against Rayon and Mr. Alfred H. McCollough as an officer of Rayon.

2. Sunbelt Media Sales, Inc. ("Sunbelt") was a Florida corporation in business as an independent magazine representative. In 1981, Sunbelt formed Vista as a wholly-owned subsidiary to engage in the publishing of trade magazines in the textile industry. Vista, also a Florida corporation, was located in Coral Springs, Florida.

3. Rayon, a New York corporation located at 303 Fifth Avenue, New York City, published two textile industry trade magazines, "Modern Textile" and "Modern Knitting Management". The circulation lists for the magazines were maintained on a computer tape by CoMarco Data Services, Inc. ("CoMarco"), an unrelated New York corporation. CoMarco forwarded monthly printouts in the form of labels to the printer in New Hampshire from which state distribution of the magazines was made.

4. On April 29, 1981, the petitioner, Vista, purchased all the assets, both tangible and intangible, of Rayon. The total sales price according to the Purchase and Sale Agreement was \$223,500.00 which was allocated as follows:

Contracts for advertising	\$ 2,000.00
Circulation lists	212,000.00
Copyrights, etc.	1,000.00
Magazines and goodwill	1,000.00
Records and files	3,000.00
Fixed assets, etc.	1,500.00
Contract rights, etc.	1,000.00

Trade and publication names	1,000.00
One-third interest in "Survey"	<u>1,000.00</u>
	\$223,500.00

According to the Purchase and Sale Agreement, the circulation lists of the magazines consisted of not fewer than 11,534 individuals and firms in the textile field served by "Modern Textile" and not fewer than 7,145 individuals and firms in the textile field served by "Modern Knitting Management".

5. Subsequent to the sale, the magazine operations, including editorial, circulation fulfillment and printing, moved to Florida. CoMarco was directed to send the computer tape containing the circulation lists to Wemarcobal Fulfillment Company in Vero Beach, Florida. Because of lag time in the publishing industry, the transfer was not completed until several months after the sale.

An unaudited publisher's statement made by Business Publications Audit of Circulation, Inc., an independent auditing firm for circulation lists of trade magazines, indicated the publisher of the May, 1981 issue of "Modern Textile" magazine to be Vista Publications, Inc., 303 Fifth Avenue, New York, New York. A New York telephone number for Vista was also listed.

6. On audit, the examiner for the Audit Division determined taxes due of \$16,960.00 on the sale of the circulation lists for \$212,000.00 and taxes due of \$375.55 on expense purchases. The taxes due on the expense purchases have been paid by Rayon.

7. According to Mr. Angelo Varrone, Vice President of Vista, the allocation of the sales price of the nine separate categories in the Purchase and Sale Agreement was made for Mr. McCollough's own personal reasons. Mr. Varrone testified that "the allocations that were requested were requested by Mr. McCollough for his own reasons and were not any determination on our part at all." Further, "(Mr. McCollough) was worried about his own personal tax situation."

Mr. Varrone further indicated that, based upon the method of evaluating a circulation list, i.e., what it would cost to recreate the list, the circulation list for "Modern Textile" at the time of sale could be valued at between \$20,000.00 and \$30,000.00.

8. The circulation list for "Modern Textile", which was increased from 20,000 to 22,000 subscribers, was subsequently sold by Vista for \$15,000.00.

9. Petitioner argues that the intent of the Tax Law is to tax on the basis of the value of the property and that the tax on the circulation lists should be based on the value as determined by Mr. Varrone and not according to the allocation in the contract. Moreover, petitioner argues that the transaction is not subject to tax because the real situs of the assets transferred and intended to be transferred was Florida and not New York. Petitioner argues that the purchase in question relates substantially to the purchase of rights to publish magazines.

10. The Audit Division argues that a bulk sale transaction occurred between petitioner and Rayon; that a circulation list is a tangible asset subject to tax at the value stated in the contract; and that the sale of the list took place in New York State.

#### CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the service of:

"(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons...".

B. That a circulation list is a business asset the sale of which constitutes the sale of information and is, therefore, taxable under section 1105(c) of the Tax Law (Long Island Reliable Corp. v. Tax Commission, 72 A.D.2d 826; Dairymens League Co-op Association, Inc. et al., State Tax Commission, December 14, 1984). Therefore, the Audit Division properly determined that the sale of the circulation lists was subject to tax.

C. That section 1101(b)(3) of the Tax Law defines "(r)eceipt" as "(t)he amount of the sales price of any property and the charge for any service taxable under this article...".

D. That the sales price of the circulation lists was \$212,000.00 as stated in the Purchase and Sale Agreement. Therefore, the Audit Division properly determined that tax was due on said amount.

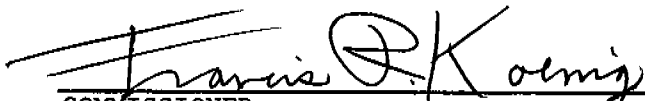
E. That the petition of Vista Publications, Inc. is denied.


DATED: Albany, New York

STATE TAX COMMISSION

APR 29 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER