

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition

of

THE MORRILL PRESS

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 November 30, 1981.

---

In the Matter of the Petition

of

THE McFARLANE CORPORATION

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, 1981  
through March 24, 1984.

---

DECISION

In the Matter of the Petition

of

DAVID McFARLANE, JR.,  
as Officer of The McFarlane Corporation

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, 1981  
through March 24, 1984.

---

In the Matter of the Petition

of

ROBERT VAYNOR,  
as Officer of The McFarlane Corporation

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, 1981  
through March 24, 1984.

---

---

In the Matter of the Petition :

of :

ROBERT BYMASTER, :

as Officer of The McFarlane Corporation :

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, 1981 :

through March 24, 1984. :

---

DECISION

---

In the Matter of the Petition :

of :

THE MORRILL PRESS, INC. :

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 March 24, 1984. :

---

Petitioner The Morrill Press, Morrill Place, Fulton, New York 13069, 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 November 30, 1981 (File No. 37818).

Petitioner The McFarlane Corporation, c/o David McFarlane, Jr., The Morrill Press, Inc., Morrill Place, Fulton, New York 13069, 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, 1981 through March 24, 1984 (File No. 54790).

Petitioner David McFarlane, Jr., as officer of The McFarlane Corporation, c/o The Morrill Press, Inc., Morrill Place, Fulton, New York 13069, 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, 1981 through March 24, 1984 (File No. 54794).

Petitioner Robert Vaynor, as officer of The McFarlane Corporation, c/o The Morrill Press, Inc., Morrill Place, Fulton, New York 13069, 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, 1981 through March 24, 1984 (File No. 54792).

Petitioner Robert Bymaster, as officer of The McFarlane Corporation, c/o The Morrill Press, Inc., Morrill Place, Fulton, New York 13069, 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, 1981 through March 24, 1984 (File No. 54793).

Petitioner The Morrill Press, Inc., c/o Engraph, Inc., 2635 Century Parkway N.E., Atlanta, Georgia 30345, 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 March 24, 1984 (File No. 54791).

A hearing in the Matter of the petition of The Morrill Press was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on September 17, 1984 at 1:15 P.M., with all briefs to be submitted by May 24, 1985. Petitioner appeared by Bond, Schoeneck & King (John D. Allen, Esq., of counsel) and Auser, Sumner & Auser (Wallace Van C. Auser, III, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

On March 25, 1985, petitioners The McFarlane Corporation, David McFarlane, Jr., Robert Vaynor, Robert Bymaster and The Morrill Press, Inc., waived their

right to a hearing and submitted their petitions for decision along with the petition of The Morrill Press.

#### ISSUE

Whether charges made by engravers for finished printing plates constitute the purchase of a service subject to tax under sections 1105(c)(2) or (3) of the Tax Law or the purchase of tangible personal property exempt from tax under section 1115(a)(12) of the Tax Law.

#### FINDINGS OF FACT

1. On April 27, 1982, the Audit Division, as the result of a field audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner The Morrill Press assessing use taxes due of \$63,336.58, plus interest of \$13,243.55, for a total amount due of \$76,580.13 for the period June 1, 1978 through November 30, 1981.

2. In or about March, 1984, The Morrill Press ("Morrill") changed its name to The McFarlane Corporation. Consequently, the aforementioned petitioners are, in effect, the same entity.

3. On June 7, 1984, the Audit Division, as the result of a second field audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner The McFarlane Corporation f/k/a The Morrill Press assessing a use tax due of \$32,112.98, plus interest of \$3,950.66, for a total amount due of \$36,063.64 for the period December 1, 1981 through March 24, 1984.

4. On June 7, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner David McFarlane, Jr., as officer of The McFarlane Corporation, for taxes due of

\$32,112.98, plus interest of \$3,950.66, for a total amount due of \$36,063.64 for the period December 1, 1981 through March 24, 1984.

5. On June 7, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Robert Vaynor, as officer of The McFarlane Corporation, for taxes due of \$32,112.98, plus interest of \$3,950.66, for a total amount due of \$36,063.64 for the period December 1, 1981 through March 24, 1984.

6. On June 7, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Robert Bymaster, as officer of The McFarlane Corporation, for taxes due of \$32,112.98, plus interest of \$3,950.66, for a total amount due of \$36,063.64 for the period December 1, 1981 through March 24, 1984.

7. On June 7, 1984, the Audit Division issued two notices of determination and demand for payment of sales and use taxes due against petitioner The Morrill Press, Inc. as follows:

<u>Notice Number</u>	<u>Total Tax Due</u>	<u>Total Interest Due</u>	<u>Total Amount Due</u>	<u>Period</u>
S840607000S	\$63,336.58	\$29,758.11	\$93,094.69	6/1/78-11/30/81
S840607001S	\$32,112.98	\$ 3,950.66	\$36,063.64	12/1/81-3/24/84

The above notices provided the following explanation:

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

8. All of the petitioners herein have timely filed petitions for a hearing to review the aforementioned notices. The petitioners challenge the assessments on the ground that Morrill purchased machinery or equipment from the engraver in the form of a finished plate for use or consumption directly and predominantly in the production of tangible personal property,

which purchase was exempt from use taxes under Tax Law §1115(a)(12). The petitioners further claim that the Audit Division, in its publication entitled "Sales and Use Tax - Industry Guidelines PRINTING AND MAILING INDUSTRY" ("Guidelines"), has recognized that finished printing plates fall within the production exemption.

9. On the other hand, the Audit Division asserted use taxes on the charges made by engravers for Morrill's purchase of finished printing plates on the ground that Morrill purchased taxable services under Tax Law §1105(c)(2) or (3).

10. During the period at issue, Morrill, from its plant located in Fulton, New York, was engaged in the business of printing and producing tangible personal property in the form of flexible packaging materials like wrappers for "M & M" candies and "Nestles Crunch" candy bars for resale to its customers.

11. Morrill printed by using the rotogravure method, which is one of four basic printing methods. The others are offset, letter press and flexographic. Each of the four basic printing methods involves the use of a base or plate cylinder to which a printing plate is attached and the use of the base cylinder with the attached printing plate in a press.

12. Morrill's rotogravure press includes a removable machine part known as a base cylinder which consists of steel tubing in varying circumferences and lengths with journals on either end. A gravure printing plate, sometimes referred to as the "image carrier", is an image-bearing device and piece of equipment which, when inserted in the printing press, rotates and prints the image as ink is applied.

13. Morrill purchased finished printing plates from gravure engravers, all of whom are located outside New York State. The Audit Division assessed a use tax on the charges made by the engravers for the plates.

14. The steps which Morrill follows in purchasing finished printing plates from gravure engravers include the forwarding of a blank base cylinder to the engraver with the mechanical line art, usually supplied by Morrill's customers, which defines the images to be produced. The engraver attaches a thin copper plate to the cylinder, through electrolysis, to achieve a 360 degree print surface so that a continuous image may be printed without any seams or gaps. The ability to print a continuous image is one of the features of gravure printing.

15. The image to be printed is etched by the engraver into the copper plate, utilizing a photo engraving process. Typically, "negatives" are prepared from drawings of image using light sensitive film. By exposing the film to light, the image is transferred to the copper plate. The image is then etched or engraved into the plate using acid. The etching or engraving by the engraver occurs in the surface of the plate rather than in that of the cylinder.

The plate maker or engraver for printing methods other than gravure follows the same basic steps to produce an image on the plate.

16. Because copper is a relatively soft metal which would wear out rapidly, the engraver finishes the gravure plates with chrome.

17. The plates are removable from the cylinders by stripping the plates with the use of a lathe. This is done when a customer no longer wants a particular printed image. Once the plate is removed from a cylinder, the cylinder is reused.

18. A finished gravure printing plate is a tangible piece of property and equipment separate and distinct from the base cylinder. The plates have a useful life of more than one year and Morrill used these plates for many years depending on the number of copies which its customers wanted. Morrill stored the base cylinders with the attached finished plates in a storage room at its plant.

19. The Audit Division's Guidelines provide the following description of printing and gravure printing:

"A. Description of Printing

Printing is a technique of producing an image on a plate and transferring that image to a printing surface. There are several printing techniques which are classified into major divisions according to the manner of producing the image and the way the image is transferred.

\* \* \*

2. Intaglio (gravure) printing

A printing process where the printing area is etched out of, and below, the surrounding non-printing parts. The whole surface is covered with ink, the excess removed, leaving the etched portions filled with ink. When the paper is pressed against the surface, the ink is drawn out and transferred to the stock. Rotogravure, photogravure and color gravure are types of intaglio printing."

20. The Audit Division's Guidelines provide the following definitions:

"Engraving - A plate making process in which the image areas of a plate are recessed, as in gravure. These areas of the paper are thereby embossed (raised).

\* \* \*

Plate - An image bearing device attached to a printing press. Plates are constructed of numerous materials dependent upon the type of press, the number of impressions to be made and the number of printings (reruns). In addition, the materials used in constructing a plate's surface will vary according to the method to be employed in projecting an image on to the plate. (Equipment)

Plate Cylinder - The cylinder to which a printing plate is attached. (Machine part)



21. The Audit Division's Guidelines provide as follows, regarding the production exemption as it pertains to the printing industry:

"In producing printed matter, a printer purchases equipment\* (footnote omitted) from various suppliers which is used for the ultimate purpose of making finished plates with images ready for the press.

Finished plates, from which the images are transferred to paper, board, plastic, or other materials, are produced from photographic negatives and positives. The printing process involves the transfer of the image from the finished plate to the final product either by direct impression, as in letterpress printing, or from a finished plate to a blanket and then to the final product, as in lithography. The finished plate is produced by transferring an image to it from a photographic negative or positive. Unless it is anticipated that additional orders for the same copy will be required, the plates, negatives, etc., are destroyed or given to the customer. If additional orders for the same copy are anticipated, the plates are stored, usually by the printer.

- a. Section 1115(a)(12) of the Sales Tax Law exempts machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property for sale. Within the printing industry this exemption will encompass purchases of printing presses, photocomposition machinery, plates, photographs, artwork, drawings, mechanicals, and as of June 1, 1980, composition, typography, and progressive proofs."

22. On March 24, 1984, The Morrill Press, Inc., a Georgia corporation, purchased substantially all of the assets of The McFarlane Corporation f/k/a The Morrill Press for \$3,960,000.00.

23. Included in Morrill's brief are proposed findings of fact numbered one through thirty-two which have been adopted and incorporated into this decision. Morrill's brief also contained proposed conclusions of law. However, under State Administrative Procedure Act §307, the State Tax Commission is not required to rule upon such proposed conclusions of law.

CONCLUSIONS OF LAW

A. That section 1105(c)(2) of the Tax Law imposes a sales tax on the services of "(p)roducing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed."

B. That 20 NYCRR 527.4(d) provides the following definition of processing for purposes of the tax imposed under section 1105(c)(2) of the Tax Law:

"(d) Processing. Processing is the performance of any service on tangible personal property for the owner which effects a change in the nature, shape, or form of the property."

C. That section 1110 of the Tax Law imposes a tax on the use of personal property upon which the services described in section 1105(c)(2) have been performed when no sales tax has been paid for the same, and further provides that the use tax is applied against the charges for the service (Mohawk Airlines, Inc. v. Tully, 75 A.D.2d 249).

D. That, notwithstanding the fact that a finished gravure printing plate is a tangible piece of property and equipment separate and distinct from the base cylinder, the charges made by engravers for said plates constitute the purchase of the service of processing tangible personal property pursuant to the meaning and intent of section 1105(c)(2) of the Tax Law (see Imperial Manufacturing Company v. State Tax Commission, 99 A.D.2d 874).

E. That the petitions of The Morrill Press, The McFarlane Corporation, David McFarlane, Jr., Robert Vaynor, Robert Bymaster and The Morrill Press,

Inc. are denied and the notices of determination and demand for payment of sales and use taxes due issued April 27, 1982 and June 7, 1984 are sustained.

DATED: Albany, New York

OCT 16 1985

STATE TAX COMMISSION

Roderick A. Allen  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

W. A. S. J. M.  
COMMISSIONER