

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
METROPOLITAN LIFE INSURANCE COMPANY  
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, 1977  
through November 30, 1980.

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DECISION

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In the Matter of the Petition  
of  
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK  
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, 1975  
through May 31, 1978.

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Petitioners, Metropolitan Life Insurance Company, One Madison Avenue, New York, New York 10010 and Mutual Life Insurance Company of New York, c/o Irving P. Sulzer, 1740 Broadway, Mail Drop 17-23, New York, New York 10019, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods December 1, 1977 through November 30, 1980 and June 1, 1975 through May 31, 1978, respectively (File Nos. 39506 and 30356).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 17, 1984 at 9:30 A.M., with all briefs submitted by December 18, 1984. Petitioners appeared by Arnold B. Panzer, Esq. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether reports concerning applicants for life and health insurance purchased by petitioners from Hooper Holmes, Inc. and Equifax, Inc. constituted the purchase of "detective services" within the meaning and intent of New York City Administrative Code §BB46-2.0(a)(2).

FINDINGS OF FACT

1. On August 12, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Metropolitan Life Insurance Company ("Metropolitan") in the amount of \$185,978.24, plus interest of \$29,481.61, for a total due of \$215,459.85 for the period December 1, 1977 through November 30, 1980. The assessment was based on Metropolitan's purchase of reports from Hooper Holmes, Inc. ("Hooper Holmes") and Equifax, Inc. ("Equifax"), and was based on the theory that the purchase of these reports constituted the purchase of information services taxable under Tax Law §1105(c)(1). Following the decision of the Court of Appeals in Matter of Metropolitan Life Insurance Company v. State Tax Commission, 55 N.Y.2d 758 (1981), the Audit Division revised and recomputed the assessment on the ground that the purchase of the reports constituted the purchase of detective services taxable under New York City Administrative Code §BB46-2.0(a)(2), enacted pursuant to Tax Law §1212-A(h)(2)(i)(B) of Article 28. This recomputation reduced the amount of the claimed deficiency to \$92,989.12.

2. On March 27, 1980, the Audit Division issued a Notice of Determination and Demand against petitioner Mutual Life Insurance Company of New York ("MONY") in the amount of \$77,630.00, plus interest of \$19,493.52, for a total due of \$97,123.52 for the period June 1, 1975 through May 31, 1978. The assessment was based upon MONY's purchase of reports from Hooper Holmes and Equifax. The

notice also included tax assessed with respect to MONY's purchase from Hooper Holmes of a service known as "Portamedic". Portamedic is a service performed by paramedical personnel, who visit applicants for life insurance in their homes or offices and perform a superficial medical examination. Following the decision of the Court of Appeals in Matter of Metropolitan Life Insurance Company, supra, the Audit Division revised and recomputed the deficiency on the grounds that the purchase of the foregoing services constituted the purchase of a detective service taxable under New York City Administrative Code §BB46-2.0(a)(2). This recomputation reduced the assessment to \$36,641.50. By stipulation between petitioners and the Audit Bureau, it was agreed that \$968.60 of the revised deficiency, representing taxes assessed with respect to the purchase of Portamedic, was erroneously assessed. The only issue thus remaining, as to both petitioners, is the treatment of the Hooper Holmes and Equifax reports as "detective services" under the New York City Administrative Code.

3. Hooper Holmes is a New York corporation with its principal offices in Basking Ridge, New Jersey. The company provides services under three major service groupings. The first grouping is referred to as "portamedic nursing." These services consist of providing nurses and home-health aides for staff relief in hospitals, nursing homes, and other institutions, as well as providing nurses and home-health aides for private homes for home-health care. Portamedic nursing also includes "portamedic surveys." These consist of physical examinations performed by nurses on life and health insurance applicants. Portamedic nursing constitutes approximately 50 percent of Hooper Holmes' revenues.

The second major service group is referred to as "direct mail marketing services." This is a computer service, performed exclusively in New Jersey, for direct-mail marketers. Through the use of a Hooper Holmes computer,

duplicate names, addresses and other relevant information are removed from the customer's mailing lists, so as to save the customer the cost of sending duplicates through the mail.

The third major service grouping is referred to as "business information services." Activities performed by the Hooper Holmes business information group include obtaining motor vehicle reports from state motor vehicle bureaus on behalf of motor vehicle insurers, preparing foreclosure reports, and providing property preservation work on vacant properties for mortgage banking companies. The reports at issue in this matter constitute part of Hooper Holmes business information services group.

4. The purpose of the reports prepared with respect to applicants for life insurance policies is to assist the prospective insurer in evaluating the risks associated with issuing a particular policy. The reports prepared by Hooper Holmes contain information with respect to the applicant's employment, financial standing, financial worth, recreational activities, health, and habits. The principal source of the information contained in a Hooper Holmes report is the applicant himself, who is interviewed in virtually every case. In addition to the applicant, Hooper Holmes will interview one or more additional persons. The most typical Hooper Holmes report consists of an interview with the applicant plus two additional persons, usually the applicant's employer and a neighbor. A report of this type costs about \$12.00 to \$15.00, and takes about half an hour of research to prepare, including typing. All Hooper Holmes reports are typed on a pre-printed form. The applicant is always notified in advance that he will be the subject of a Hooper Holmes inquiry. Such notification is required by the Federal Fair Credit Reporting Act to which all Hooper Holmes insurance reporting activities are subject.

5. Hooper Holmes' employees engaged in preparing reports on insurance applicants are known as "field inspectors." In hiring field inspectors, Hooper Holmes does not look for people with a background in police or detective work. In fact people with such backgrounds are generally regarded as being ill-suited for Hooper Holmes' type of work. Hooper Holmes does not hold itself out as doing private detective or investigative work and has never done so.

Although Hooper Holmes is licensed as an "investigator" under Article 7 of the General Business Law, Hooper Holmes' "investigative" work is strictly limited to reporting on applicants for insurance. Hooper Holmes does not offer personal or business protection; it does not do divorce work or follow suspects; it does not track down missing persons or stolen funds; it does not investigate actual or suspected thefts; it does not locate missing property; it does not handle blackmail cases; it does not do polygraphs or electronic sweeps; nor will Hooper Holmes undertake any such work. Hooper Holmes' field inspectors never carry guns. Hooper Holmes is not a member of the Associated Licensed Detectives of New York and its corporate charter for the State of New York does not authorize it to perform detective services.

6. Equifax is a Georgia corporation with its principal offices located in Atlanta. In addition to reporting on applicants for life insurance, Equifax is engaged in a variety of business activities both within and without the life and health field. Equifax offers a paramedical service called PMI, which is basically similar to the mobile examination service offered by Hooper Holmes' Portamedic service. Outside the life and health insurance field, Equifax prepares reports for casualty insurers on the replacement cost of residential homes, performs physical auditing of merchants' inventories on behalf of banks

and other commercial lenders, performs damage inspections on used motor vehicles and prepares various market surveys.

7. The reports prepared by Equifax on applicants for life insurance include information relating to the applicant's occupation, duties at work, employment background, financial standing, recreational pursuits, and habits, primarily the use of cigarettes and alcohol. As is the case with Hooper Holmes, the bulk of the information contained in Equifax reports is developed through interviews with the applicant himself. A significant percentage of Equifax reports are based solely on an interview with the applicant. The typical Equifax report is based on interviews with two persons in addition to the applicant. This report, known as the "basic life report", takes about half an hour to prepare, including interviews and typing, and costs about \$7.00. All reports are typed on a pre-printed form.

8. Equifax employees engaged in preparing reports on insurance applicants are known as "field representatives." In hiring field representatives, Equifax, like Hooper Holmes, tends to avoid hiring people who have worked in detective agencies or have a background in police work. None of the field representatives in Equifax's New York office has such a background. Equifax, like Hooper Holmes, is licensed as an "investigator" under Article 7 of the General Business Law and its investigative work is strictly limited to reporting on applicants for insurance. Equifax has never held itself out as being in the private detective business. All employees are instructed not even to intimate to anybody that they are "private detectives." Equifax is not listed in the New York City Yellow Pages under "detective agencies." Equifax is not a member of the Associated Licensed Detectives of New York and its license to do business in the State of New York does not authorize it to engage in detective services.

9. Equifax's predecessor, Retail Credit Company, Inc., became licensed under Article 7 of the General Business Law in 1942. Prior to 1938, the General Business Law covered only the licensing of "detectives." In 1938, the law was amended to cover both "private detectives and investigators." Retail Credit was specifically licensed as being in the business of "investigator." Retail Credit's license was issued with the word "detective" struck out. A letter from the New York Director of Licenses to Retail Credit assured it that its license in no way designated Retail Credit as a private detective agency.

10. Along with their brief, petitioners submitted proposed findings of fact, all of which have been adopted and incorporated herein.

#### CONCLUSIONS OF LAW

A. That, pursuant to authority granted under section 1212-A(h)(2)(i)(B) of the Tax Law, section BB46-2.0(a)(2) of the New York City Administrative Code imposes a tax upon receipts from every sale, except for resale, of:

"Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature, whether or not any tangible personal property is transferred in conjunction therewith, and except to the extent otherwise taxable under article twenty-eight of the tax law."

B. That the services provided to petitioners by Hooper Holmes and Equifax do not involve any protection or detection activities whatsoever. The services merely provide reports containing information on life insurance applicants, most of which information comes from the applicants themselves. The services provided are so far removed from the types of services specified in section BB46-2.0(a)(2) as to render the statute inapplicable to such services purchased


by petitioners. The purchase of the service of providing informational reports on life insurance applicants is, therefore, not subject to sales and use tax within the meaning and intent of the aforesaid section of the New York City Administrative Code.


C. That the petitions of Metropolitan Life Insurance Company and Mutual Life Insurance Company of New York are granted and the notices of determination and demands for payment of sales and use taxes due issued August 12, 1981 and March 27, 1980, respectively, are cancelled.


DATED: Albany, New York

APR 15 1985

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER