

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SOQ BROADCASTING CORP.,	:	
formerly WSOQ, 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, 1979	:	
through November 30, 1981.	:	

Petitioner, SOQ Broadcasting Corp., formerly WSOQ, Inc., P.O. Box 20, North Syracuse, New York 13212, 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, 1979 through November 30, 1981 (File No. 41177).

A small claims hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on November 29, 1984 at 10:45 A.M., with additional evidence to be submitted by December 28, 1984. Petitioner appeared by its president, Dennis R. Israel. The Audit Division appeared by John P. Dugan, Esq. (Patricia L. Braumbaugh, Esq., of counsel).

ISSUE

Whether petitioner's purchase of a consulting service which included the dubbing of music to tapes which were used at petitioner's radio station was subject to use tax.

FINDINGS OF FACT

1. On September 20, 1982, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against WSOQ, Inc., the predecessor to petitioner SOQ Broadcasting

Corp., in the amount of \$4,778.47 plus interest of \$1,113.77 for a total due of \$5,892.24 for the period June 1, 1979 through November 30, 1981. On or about December 20, 1982, petitioner remitted payment of the tax and interest due. Petitioner then filed a petition requesting a refund of the tax and interest paid.

2. At a pre-hearing conference, the Audit Division agreed to an allowance for the tax assessed and paid on purchases which were delivered out of state; as a result, the total refund amount in issue is \$3,646.14 plus interest.

3. Petitioner owns and operates radio stations WEZG-AM and WSCY-FM in the Syracuse, New York area. On audit, the Audit Division determined that petitioner's purchase of a music consulting service which included a supply of taped musical selections was subject to use tax as the service of imprinting tangible personal property for a person who furnishes the tangible personal property. Petitioner maintains that the charge is for a non-taxable music service.

4. Schulke Radio Productions, Ltd. ("Schulke") is known in the radio industry as a programming consultant. Schulke provided its consulting services to petitioner during the period in issue for a monthly fee of \$1,700.00. The services provided by Schulke were numerous and varied. Schulke suggested sales and marketing strategies to the station including seasonal promotional activities. Schulke also gave advice concerning the type of personality the on-air announcers should have. Schulke provided engineering consultants who made suggestions for improving the sound quality of station broadcasts. Schulke also sent printed newsletters to its subscribers containing information on marketing, promotions and programming. Schulke consultants met with petitioner's program director to give advice regarding what music to play, how much news and weather reporting

to broadcast and various other programming concerns. Additionally, Schulke held one-day seminars at its New Jersey headquarters for station managers.

5. In addition to the aforementioned service, Schulke also provided a tape dubbing service which involved the taping of musical selections on tapes provided by the station. The tapes appear to have comprised virtually all of petitioner's musical programming. The redubbed tapes were sent to petitioner at irregular intervals depending on how often petitioner's program director and Schulke decided to update the program format. Several months could pass between redubbing of tapes. The tape dubbing service was included within the charge for the overall consulting agreement. The only time Schulke separately charged petitioner for a tape was on infrequent occasions when a broken or damaged tape was returned to Schulke for replacement. When this occurred there was a charge of approximately \$20.00 which was stated on a separate invoice. Occasionally, Schulke provided petitioner with prerecorded tapes of musical selections. There was no separate charge for such tapes.

6. The Audit Division assessed use tax on the entire \$1,700.00 monthly consulting fee because it determined that the tape dubbing was a taxable service the charge for which was not stated separately from the nontaxable services. It was impossible to determine from the record how much of the monthly fee was for tape dubbing and prerecorded tapes.

CONCLUSIONS OF LAW

A. That section 1105(c)(2) of the Tax Law imposes a tax on the sale of the service of

"Producing, 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 services are performed."


B. That the dubbing of music onto tapes furnished by a customer is a printing or imprinting service which is subject to tax within the meaning and intent of section 1105(c)(2) of the Tax Law. Likewise, the purchase of pre-recorded tapes is subject to tax as the purchase of tangible personal property under section 1105(a) of the Tax Law. Although the tapes were provided as part of the consulting service, they were a significant part of the service since the music contained thereon constituted virtually all of petitioner's music programming. Therefore, inasmuch as the service was composed of substantial amounts of taxable property and services mixed with nontaxable services sold at a single unit price, the tax is properly collected on the total price [cf. 20 NYCRR 527.1(b)].

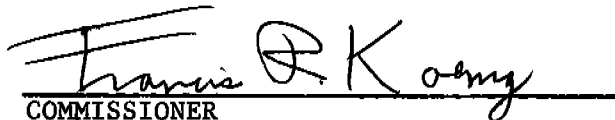
C. That the petition of SOQ Broadcasting Corp., formerly WSOQ, Inc., is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 20, 1982 is sustained.

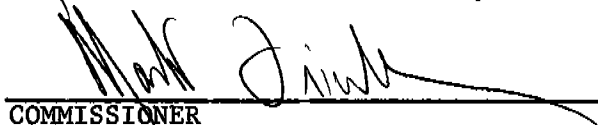
DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985


PRESIDENT


COMMISSIONER


COMMISSIONER