

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

COLONIAL ENGRAVING CO., 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 September 1, 1978
through February 28, 1982.

DECISION

In the Matter of the Petition

of

DPR LEASING CO., INC., AS PURCHASER

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 September 1, 1978
through February 28, 1982.

Petitioner, Colonial Engraving Co., Inc., 157 Chambers Street, New York, New York 10007, 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 September 1, 1978 through February 28, 1982 (File No. 43058).

Petitioner, DPR Leasing Co., Inc., c/o Jack M. Sadis, 225 W. 34th Street, New York, New York 10122, 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 September 1, 1978 through February 28, 1982 (File No. 64915).

A consolidated hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1986 at 9:15 A.M, with all briefs to be submitted by

October 30, 1986. Petitioners appeared by Sidney Feldshuh, Esq. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUES

I. Whether purchases of engraved steel dies by petitioner Colonial Engraving Co., Inc. were subject to the 4 percent New York City sales tax, where such dies were used by said petitioner in printing engraved stationery, then resold with the stationery.

II. Whether the use of a particular test period selected by the auditor was proper.

FINDINGS OF FACT

1. During the period at issue, petitioner Colonial Engraving Co., Inc. (hereinafter referred to as "petitioner") was engaged in the custom printing of engraved stationery. Subsequent to the period at issue, on April 26, 1985, petitioner's assets and good will were sold to DPR Leasing Co., Inc.

2. An audit of petitioner was performed by auditors from the City of New York's Metropolitan Audit Group.

(a) Gross sales. Gross sales reported were reconciled to the books and the Federal tax returns. The only differences were due to the fact that sales on the sales tax returns were reported before payment was actually made, while the books were on a cash basis. This did not result in any additional tax liability.

(b) Exempt sales. Petitioner's representative agreed to a test period of May 1 through May 20, 1981, with respect to exempt sales. Nontaxable sales of \$534.95 were disallowed. A margin of error of 4.1568 percent was computed and applied against total nontaxable sales. This resulted in \$46,563.14

being disallowed for the audit period. Petitioner disagreed with this figure and was given the opportunity to make its **own** test. No such test was ever submitted to the auditor. Tax at the rate of 8 percent was computed, resulting in additional tax due of \$3,742.50.

(c) Recurring purchases. Petitioner agreed to a test period audit of recurring purchases. The auditor used the period April 1 through April 15, 1981 with respect thereto. Recurring purchases of \$3,188.68 were found taxable at the 4 percent rate, but no tax had been paid thereon. Virtually all of the purchases were of printing dies and plates, although \$50.00 was for "composition of hot type". This resulted in a margin of error of 19.3338 percent, which was applied against total purchases of \$624,312.00, for a total of additional taxable purchases for the entire period of \$120,703.23. Petitioner was given the opportunity to submit its own test. Petitioner's test of nine months between May 1980 and June 1981, inclusive, showed a 19.9316 percent margin of **error. Accordingly, the auditor's lower margin of error was used. Use tax at the New York City rate of 4 percent was applied against the additional taxable purchases of \$120,703.23 found by the auditor, resulting in \$4,828.13 in tax.**

(d) Expense purchases. A test of expense purchases was made for April 1981. Tax was found to have been paid on all such purchases.

(e) Fixed assets. Fixed assets were examined for the audit period. Purchases of fixed assets amounting to \$2,200.00 were found subject to tax of \$88.00.

3. On December 20, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner in the amount of \$8,658.63 in additional tax for the period September 1, 1978 through February 28, 1982, plus simple interest. On August 1, 1985, the Audit

Division issued a similar notice to DPR Leasing Co., Inc. as purchaser of the assets of Colonial, pursuant to Tax Law § 1141(c).

4. Upon receiving a customer's order, petitioner would purchase a custom-made engraved steel die with the copy desired by the customer engraved on it. Petitioner would be billed for the die by the diemaker. Petitioner would then insert the die into its press and print the stationery for the customer. Both the stationery and the steel die were subsequently transferred to the customer. The charge for the die was separately stated on petitioner's invoice to the customer and sales tax was charged on the total price of the stationery and the die.

5. The solid steel dies used by petitioner are distinguishable from steel rules and hollow dies in that the engraved dies used by petitioner are custom-made and ordinarily are limited in use to one customer, while steel rules and hollow dies have a more general application, e.g., cutting certain shapes.

6. The dies used by petitioner would ordinarily last for about 25,000 to 50,000 impressions before they would have to be reetched or remade. If one of petitioner's customers wanted to reorder, the customer would send the die back to petitioner.

7. At a Tax Appeals Bureau conference, the tax of \$3,742.50 assessed on nontaxable sales was cancelled in full. Petitioner concedes that \$88.00 in tax *is* due on fixed assets. The issues remaining relate to recurring purchases of engraved steel dies. Petitioner contends that the dies were purchased for resale and thus were not subject to tax. Petitioner also challenges the accuracy of the audit on the basis that April was not an appropriate month for a test, as it was the final month of petitioner's fiscal year and, accordingly,

a disproportionate number of purchases were made at that time. Petitioner also maintains that, as the solid steel dies are different from the steel rules and hollow dies referred to as machinery and equipment taxable by New York City in Department of Taxation and Finance Memorandum TSB-M-79(7.1)S, they are not subject to the New York City tax.

CONCLUSIONS OF LAW

A. That Tax Law § 1107(a) imposes an additional sales and use tax of 4 percent within the City of New York. The tax **is**, for most purposes, identical to the tax imposed under Tax Law §§ 1105 and 1110.

B. That Tax Law I 1107(b), however, provides, inter alia, that the exemption set forth in Tax Law § 1115(a)(12), relating to machinery or equipment for use or consumption directly and predominantly in production, shall not apply to the tax under Tax Law § 1107(a). Accordingly, such machinery or equipment is taxable at 4 percent within the City of New York.

C. That while the engraved steel dies used by petitioner in its printing operation may be distinguished from steel rules and hollow dies, they nevertheless constituted machinery or equipment exempt from the State tax, but taxable to petitioner at the 4 percent rate, unless they were purchased exclusively for resale.

D. That since petitioner used the steel dies prior to reselling them to its customers, they were not purchased exclusively for resale, and thus were subject to the 4 percent tax (Tax Law § 1101(b); 20 NYCRR 526.6[c][1]).

E. That the Audit Division's use of the 19.3338 percent margin of error based on the test of 15 days in April 1981 was proper; petitioner's own nine month test showed an even higher margin of error.

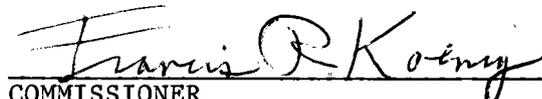
F. That except for the adjustment made at the conference (Finding of Fact "7"), the petitions are denied and the notices of determination and demands for payment of sales and use taxes due issued on December 20, 1982 and August 1, 1985, are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 25 1987


PRESIDENT


COMMISSIONER


COMMISSIONER