

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DOUBLEDAY SPORTS, 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 December 1, 1979
through November 30, 1982.

Petitioner, Doubleday Sports, Inc., Shea Stadium, 126th Street and Roosevelt Avenue, Flushing, New York 11368, 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, 1979 through November 30, 1982 (File No. 45921).

A 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 February 7, 1986 at 9:45 A.M., with all briefs to be filed by May 28, 1986. Petitioner appeared by Clarence J. O'Connor, Esq. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined that the petitioner purchased a scoreboard and not advertising rights.

11. If **so**, whether the scoreboard, upon installation, retained its identity as tangible personal property or became a capital improvement.

111. Whether the petitioner is liable for tax on the purchase of a new lighting system for Shea Stadium.

FINDINGS OF FACT

1. On May 20, 1983, 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 Doubleday Sports, Inc. assessing additional use taxes due of \$82,271.40, plus interest of \$14,472.04, for a total amount due of \$96,743.44 for the period December 1, 1979 through November 30, 1982. On March 9, 1983, petitioner, by signature of Harold W. O'Shaughnessy, its vice-president and controller, executed a consent extending the statute of limitations for issuing an assessment for sales and use taxes due for the period December 1, 1979 through February 28, 1980 to June 20, 1983.

2. On or about February 21, 1980, Doubleday Sports, Inc., a subsidiary of Doubleday & Company, Inc., purchased the New York Mets National League Baseball Club from the Metropolitan Baseball Club, Inc. Metropolitan also assigned its agreement with the City of New York for the use of Shea Stadium to Doubleday.

3. In August, 1979, prior to the start of its 1979 football season, the New York Jets purchased a new scoreboard for Shea Stadium, the major part of which contained an advertising sign. Since Metropolitan was the only entity which could receive advertising revenues from the stadium, Metropolitan purchased the advertising rights from the Jets. Later, when the Mets were sold to Doubleday, Doubleday purchased the advertising rights from Metropolitan. In March or April, 1982, Doubleday replaced the scoreboard with a "Diamond Vision" screen with computerized display capability. The old scoreboard was taken down and stored in the outfield area behind the fence. Neither the scoreboard nor the stadium was materially damaged when it was removed. Technically, the scoreboard could be put back up or used elsewhere; however, such a move would

not be economical. Petitioner did not explain how the scoreboard was actually attached to the stadium. The scoreboard is the property of the City of New York.

4. Metropolitan's agreement for use of the stadium, which was subsequently assigned to Doubleday, provides, in pertinent part, as follows:

"Metropolitan's improvements. All materials, fixtures, equipment and other property incorporated in any Construction Work (as defined in 513.1) which, pursuant to 513.7, become the property of the City.

* * *

513.1 The work which Metropolitan is required or permitted to perform pursuant to Articles XII, XIV and XVI is hereinafter in this Article called the Original Work. Any alteration, improvement, addition to or change in or to any part of the stadium premises which constitutes part of the real property (as determined under 513.7) is hereinafter in this Article called an Alteration and the work required in connection with any Alteration is hereinafter called Alteration Work. The Original Work and any Alteration Work which Metropolitan elects to do are hereinafter in this Article collectively called Construction Work.

* * *

513.7 Materials, fixtures, equipment and other property which are **so** affixed or annexed to the stadium premises that, had the affixation or annexation been performed by the City, they would have become a part of the real property, shall; immediately upon the installation thereof, become the property of, and title thereto shall vest in, the City. None of the materials, fixtures, equipment or other property title to which vests in the City under the preceding sentence shall be supplied or purchased under any agreement of conditional sale, nor shall they be the subject of any chattel mortgage, trust receipt or other form of security transaction in which title thereto is reserved or conveyed to the seller or any other entity. However, Metropolitan shall have the right to remove any of such materials, fixtures, equipment or other property (or parts thereof) if it promptly replaces the same with new or other materials, fixtures, equipment or other property of like kind and like or better quality, in which event Metropolitan shall also have the right to dispose of and/or sell the materials, fixtures, equipment and other property **so** removed and replaced, and to retain the proceeds of such disposition and/or sale. Prior notice of any such removal shall be given to the Commissioner," (Emphasis in original).

5. On February 12, 1982, Doubleday purchased new lighting fixtures from Thorn EMI Lighting, Inc. for \$750,000.00. The project entailed the removal by Thorn of 1,500 old fixtures and installation of 720 new fixtures. The new floodlights were designed especially for sports and stadia, where the highest lighting standards are required, coupled with network-quality color television transmission. Their compact design and versatile beam spreads also make them suitable for long and short range architectural and special effect lighting. The main housing is constructed in two sections; the front contains the gasketed lens, and attaches to the yoke. The rear section, which is fastened to the front with three latches, contains the lamp, the electronic starting circuits and wiring terminals. This split-construction feature allows all servicing to take place by removing the rear section. The front section, and therefore the aiming, is never disturbed once it is set. A set of four floodlights on a yoke was attached to the existing steel structure on the roof of Shea Stadium by first drilling a hole in the structure and attaching the yoke with a nut and bolt. Next the floodlights were aimed at a predetermined point on the field. Lastly, the wiring, extending out of the rear section of the housing and running through a flexible conduit, was spliced into the existing wiring. The floodlights could be removed without material damage to themselves or to the stadium. Floodlights were also installed on the twelve towers surrounding that part of the stadium not covered by a roof; however, the method of installation was not explained. The newly-installed lighting system became the property of the City of New York.

6. Article 15, section (c), of the purchase agreement provided that in the event functional completion did not occur on or before April 12, 1982, if

Doubleday so desired and immediately notified Thorn, Thorn would reinstall all existing fixtures that were removed, at Thorn's expense.

7. On audit, the Audit Division determined that petitioner was liable for use taxes totalling \$82,271.40; \$20,396.40 at the 8 percent rate on petitioner's \$254,955.00 payment to Metropolitan for the scoreboard and \$61,875.00 at the 8½ percent rate on petitioner's \$750,000.00 payment to Thorn for the new lighting system.

CONCLUSIONS OF LAW

A. That Doubleday purchased advertising rights to the scoreboard from Metropolitan and not tangible personal property. Therefore, said payment was not subject to sales and/or use tax.

B. That, in view of Conclusion of Law "A", Issue "II" is hereby rendered moot.

C. That the term "capital improvement" is defined by section 1101(b)(9) of the Tax Law as follows:

"Capital improvement. An addition or alteration to real property which:

- (i) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
- (ii) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
- (iii) Is intended to become a permanent installation."

This provision, enacted by Chapter 471 of the Laws of 1981 (effective July 7, 1981), represents a legislative enactment of the substance of the Commission's previously promulgated regulation on the subject, located at 20 NYCRR 527.7(a)(3).

D. That since the new lighting fixtures were not affixed to the real property so that removal would cause material damage to the stadium or fixtures,


said installation constitutes the purchase of tangible personal property and not a capital improvement.

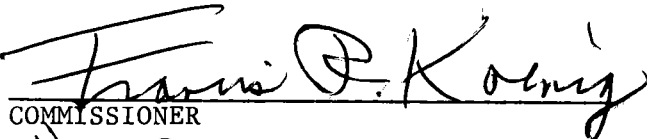
E. That the petition **of** Doubleday Sports, Inc. is granted to the extent indicated in Conclusion **of** Law "A"; the Audit Division is hereby directed to modify the Notice **of** Determination and Demand for Payment **of** Sales and Use Taxes Due issued May 20, 1983; and that, except as **so** granted, the petition is denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER