

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition

of

STATION WNYT-TV

DETERMINATION

for Review of a Determination or for Refund of :
Sales and Use Taxes under Articles 28 and 29
of the Tax Law for the Period March 1, 1980
through August 31, 1982.

Petitioner, Station WNYT-TV, 13 North Pearl Street, Albany, New York 12204, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1980 through August 31, 1982 (File No. 57551).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W. A. Harriman State Office Campus, Albany, New York on October 22, 1986 at 1:15 P.M., with all briefs to be submitted by January 21, 1987. Petitioner appeared by John V. Berna, Esq. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund of sales tax paid on its acquisition of television programs delivered by satellite transmission.

FINDINGS OF FACT

1. On April 26, 1983, petitioner, Station WNYT-TV, filed a series of applications for credit or refund of state and local sales or use taxes for the period March 1, 1980 through August 31, 1982. The refund claims were premised upon petitioner's position that use tax was not due on license fees paid for motion pictures and video tape programs.

2. On October 2, 1984 petitioner was advised that its claims for refund were denied on the ground that petitioner was subject to tax on the amounts paid for the leasing of tapes to transmit to its viewing audience.

3. At the hearing, petitioner modified its claim for refund to the extent of seeking a refund only for tax paid for license fees for live television programs where the transmission is delivered by satellite. The amount of the refund currently sought is \$2,975.36.

4. Petitioner is a television station which pays a license fee to producers and distributors for television programs. During the period in issue, petitioner paid license fees for the programs Entertainment Tonight and Solid Gold '79. With respect to each of these programs, petitioner receives a satellite transmission at an earth station, records the program on tape owned by petitioner and then broadcasts the program in accordance with petitioner's program schedule.

CONCLUSIONS OF LAW

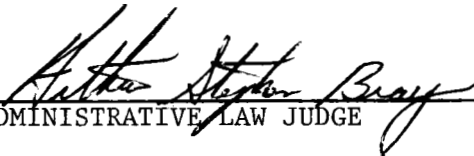
A. That Tax Law § 1105(a) imposes a sales tax upon "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Tax Law § 1101(b)(5) defines the terms sale, selling or purchase to include rental, lease or license to use or consume for a consideration.

B. That petitioner's expenses for the receipt of satellite transmissions do not arise from the retail sale of tangible personal property or any taxable service enumerated in Article 28. Therefore, the expenses incurred thereon are not subject to sales and use tax.

C. That the petition of Station WNYT-TV, as modified in Finding of Fact "3", is granted and the Audit Division is directed to refund the sum of \$2,975.36, together with such interest as may be lawfully owing.

DATED: Albany, New York

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ADMINISTRATIVE LAW JUDGE