

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Hoke Communications, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 6/1/69-5/31/75. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of March, 1981, he served the within notice of Decision by mail upon Hoke Communications, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hoke Communications, Inc.
224 Seventh St.
Garden City, NY 11530

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
13th day of March, 1981.

Ann P. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 6/1/69-5/31/75. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of March, 1981, he served the within notice of Decision by mail upon S. Zachary Scheer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. S. Zachary Scheer
Touche, Ross & Co.
1633 Broadway
New York, NY 10019

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
13th day of March, 1981.

Cornel A. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 13, 1981

Hoke Communications, Inc.
224 Seventh St.
Garden City, NY 11530

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
S. Zachary Scheer
Touche, Ross & Co.
1633 Broadway
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HOKE COMMUNICATIONS, 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, 1969	:	
through May 31, 1975.	:	

Petitioner, Hoke Communications, Inc., 224 Seventh Street, Garden City, New York 11530, 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, 1969 through May 31, 1975 (File No. 21722).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 15, 1980 at 2:45 P.M. Petitioner appeared by Zachary Scheer, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether petitioner's sale of cassette tape recordings constituted the sale of "periodicals".

II. Whether petitioner's sales of cassette tape recordings constituted an information service exempt from the imposition of sales and use tax.

FINDINGS OF FACT

1. Petitioner, Hoke Communications, Inc., is primarily engaged in publishing "Direct Marketing", a monthly magazine devoted to business communications, "Fund Raising Management", a publication for non-profit organizations, and two companion newsletters. Petitioner also sells cassette tape recordings of

interviews, speeches and conferences in the field of marketing. Petitioner publishes annually "Ideas In Sound" which is a catalog of available cassettes.

2. On January 16, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period June 1, 1969 through May 31, 1975 for taxes due of \$1,010.73, plus penalty and interest of \$780.47, for a total of \$1,791.20. Said Notice was issued as the result of a desk audit and represents taxes determined due on petitioner's receipts from the sale of cassettes. (It should be noted that the amount of tax due was erroneous because certain credits were not reflected on the Notice. The correct amount at issue is \$961.73. Additionally, petitioner issued a check, in the amount of 1,010.73 dated January 19, 1979, in payment of tax due indicated on the Notice.)

3. Petitioner employs reporters worldwide to record interviews, speeches and conferences in the field of marketing. The contents of the recordings or excerpts thereof are reproduced on tape cassettes or sometimes published in petitioner's monthly magazine "Direct Marketing". The availability of cassette recordings are published in "Direct Marketing", the weekly newsletter and the Wall Street Journal. Cassettes are sold on demand to subscribers of its publications or to the general public. Petitioner maintains a master copy of each cassette and reproduces such when it receives an order. The charge for a typical cassette is \$10.00. The cassette is either delivered to the customer or its contents are transmitted by telephone.

4. Petitioner contended that the cassettes described herein, constitute periodicals and thus are exempt from tax. As an alternative, petitioner argued that it is providing an information service specifically excluded from tax under section 1105(c)(1) of the Tax Law. Petitioner claimed that the sale of cassettes was not a free standing business, but rather an integral part of

its publishing enterprise and that such cassettes are actually periodicals in a different form.

5. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1115(a)(6) of the Tax Law provides that newspapers and periodicals are exempt from the retail sales tax imposed under section 1105(a) of the Tax Law and the compensating use tax imposed under section 1110 of the Tax Law. However, for the period at issue, there was no statutory definition of the term "periodical" or any interpretive rules or regulations construing this term. That undefined terms in the Tax Law are to be interpreted by common understanding. Business Statistics Organization, Inc. v. Joseph, 299 N.Y. 443.

B. That the term "periodical" is commonly understood as published in printed or written form with a fixed interval between the issues or numbers. That the cassette tape recordings described in Finding of Fact "3" lack such characteristics and, therefore, do not constitute a periodical within the meaning and intent of section 1115(a)(6) of the Tax Law. Accordingly, the sale of cassette tape recordings constitute the sale of tangible personal property subject to the tax imposed under section 1105(a) of the Tax Law.

C. That in the alternative, petitioner is providing an information service subject to the tax imposed under section 1105(c)(1) of the Tax Law since such service is not within the exclusions afforded under said section of the Tax Law.

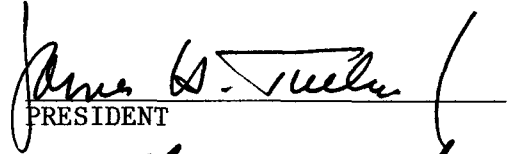
D. That the petition of Hoke Communications, Inc. is denied. However, the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 16, 1978 shall be modified to reflect the corrected amount of tax due as noted in Finding of Fact "2", together with interest computed at

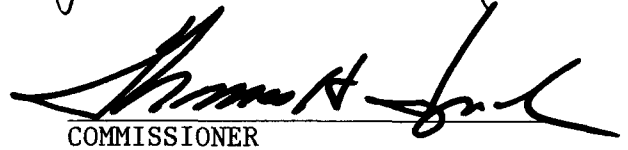
the minimum statutory rate and that petitioner be credited for its payment of \$1,010.73.

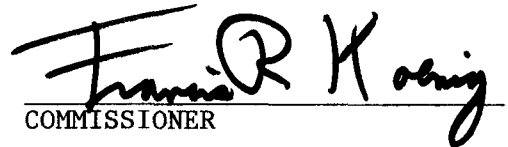
DATED: Albany, New York

MAR 13 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER