

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

J. BURR and SONS

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Period December 1,
1966 through November 30, 1969.

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of September, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon J. BURR and SONS

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

J. Burr and Sons
155 A. Main Street
Hempstead, New York 11550

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

23rd day of September, 1974

James S. Van Patten

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

J. BURR and SONS

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~XXXXXX~~ Period December 1,
1966 through November 30, 1969.

State of New York
County of Albany

JANET MACK, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of September, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon ALLAN J. MOROKNEK, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Allan J. Moroknek, Esq.
Klein & Moroknek
666 Fifth Avenue
New York, New York 10019

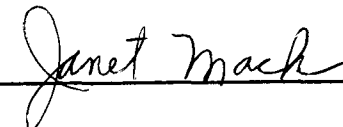
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

23rd day of September, 1974







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
September 23, 1974

J. Burr and Sons
155 A. Main Street
Hempstead, New York 11550

Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 and 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
J. BURR and SONS : DETERMINATION
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, 1966 :
through November 30, 1969. :

Applicant, J. Burr and Sons, has filed an application 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, 1966 through November 30, 1969. (File No. 11-1955373).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on April 24, 1974, at 9:00 A.M. Applicant appeared by Allan J. Moroknek, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Were certain magazines sold by applicant, J. Burr and Sons, during the period December 1, 1966 through November 30, 1969, subject to the sales and use taxes or were they exempt as periodicals?

FINDINGS OF FACT

1. Applicant, J. Burr and Sons, filed New York state and local sales and use tax returns for the period from December 1, 1966 through November 30, 1969.

2. On October 5, 1970, the Sales Tax Bureau issued a Notice of Determination and Demand for payment of sales and use taxes due against applicant, J. Burr and Sons, imposing additional sales tax

for the period from December 1, 1966 through November 30, 1969, as a result of a field audit which disclosed additional sales and purchases subject to sales tax. The auditor determined that the applicant was liable for sales tax on certain magazines which did not qualify as tax-exempt periodicals. Applicant claims that the magazines were periodicals and, therefore, exempt from the sales and use tax.

3. Applicant, J. Burr and Sons, operated a retail stationery store at 115A Main Street, Hempstead, New York. The merchandise sold included magazines, newspapers, tobacco, cards and general stationery. The group of magazines in question were purchased from "G.I. Distributors", "Imperial" and "Liberty" and consisted primarily of adult material. Upon questioning Joel Burr, who operated the store with his father during the period in question, testified that, to his knowledge, some of the magazines were published monthly, some every other month and others four times a year. As far as he knew, none were published annually, semiannually or less frequently than four times a year. Mr. Burr was asked to submit some of the magazines for the purpose of determining how often they were actually published, but failed to do so.

CONCLUSIONS OF LAW

A. That in order to constitute a periodical, exempt from the sales and use taxes under section 1115(a)(5) of the Tax Law, a publication must be published at stated intervals at least as frequently as four times a year.


B. That applicant, J. Burr and Sons, failed to show that the magazines in question were published at the required intervals, thus failing to prove that they qualified as tax-exempt periodicals.

C. That, therefore, the magazines in question, sold by applicant, J. Burr and Sons, during the period December 1, 1966 through December 1, 1969, were subject to the sales and use taxes.

D. That the application of J. Burr and Sons is denied, and the Notice of Determination and Demand for payment of sales and use taxes dated October 5, 1970, is sustained.

DATED: Albany, New York
September 23, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER