

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GREATER BUFFALO PRESS INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
August 1, 1965 through August 31, 1970.

State of New York
County of Albany

Catherine Steele, 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 24th day of August, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon Greater Buffalo Press Inc. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Greater Buffalo Press Inc.
302 Grote Street
Buffalo, New York 14207

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

24th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of August, 1976, she served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Arnold Weiss, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Arnold Weiss, Esq.
Raichle, Banning, Weiss & Halpern
10 Lafayette Square
Buffalo, New York 14203
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

24th day of August, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 24, 1976

TELEPHONE: (518) **457-3850**

Greater Buffalo Press Inc.
302 Grote Street
Buffalo, New York 14207

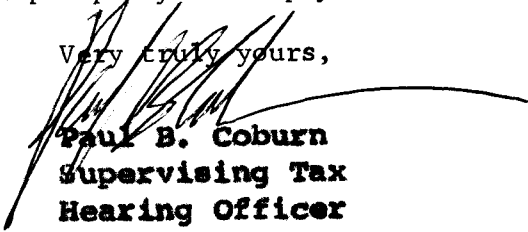
Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 & 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.

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
GREATER BUFFALO PRESS INC.	:	DETERMINATION
for a Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Periods August 1, 1965 through	:	
August 31, 1970.	:	

Applicant, Greater Buffalo Press Inc., 302 Grote Street, Buffalo, New York 14207, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods August 1, 1965 through August 31, 1970.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on October 17, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Arnold Weiss, Esq. and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (Francis X. Boylan, Esq. of counsel).

ISSUE

Were purchases from a printing plant of dated newspaper advertising supplements by stores for delivery to newspapers to be inserted in the newspapers subject to sales tax?

FINDINGS OF FACT

1. The taxpayer, Greater Buffalo Press Inc., timely filed New York State sales and use tax returns for the periods August 1, 1965 through August 31, 1970.
2. A Notice of Determination of sales and use taxes (and penalties) for the period August 1, 1965 through August 31, 1970 was issued on August 17, 1972 for \$65,017.85 under Notice No. 90749180.
3. The taxpayer, Greater Buffalo Press Inc., paid the tax and applied for a refund and revision of the determination of the deficiencies in sales tax.
4. It is stipulated by the parties that newspaper advertising is not taxable, that is to say: advertising printed by a newspaper as part of its newspaper is not taxable.
5. The taxpayer printed advertising supplements for newspapers who were unable to print the advertising supplements. The supplements carried the name of the newspaper and the date line. The taxpayer

billed the newspapers. The newspapers billed their advertisers and the supplement was part of the newspaper sold to the newspaper's readers. The parties agree that the supplement which was purchased by the newspaper was for resale by the newspaper and was not taxable.

6. However, in the present controversy, the taxpayer also printed the same kind of supplements shipped to newspapers, which were ordered and paid for by stores. The stores paid the newspapers a pre-print rate for distributions and paid the taxpayer for printing the advertising supplements which carried the newspaper's name and date. The taxpayer shipped the newspaper supplement to the newspapers designated by the store and the newspapers distributed the supplements as part of their newspaper.

7. The advertising supplements were also mailed with the newspapers and mailed under the second class mailing privileges.

8. Newspapers and periodicals as such always have been exempted from sales tax. The taxpayer, on June 17, 1965, sent its officials to a sales tax workshop conducted by the President of the New York State Tax Commission and the Director of the Sales Tax Bureau. The taxpayer's officials were told that no tax was due on its product of newspaper advertising supplements inserted in newspapers bearing the newspaper's name and date. This rule applied to all inserts with a newspaper's name and date. A similar rule had also obtained under the Erie County sales tax for many years previous to that time.

9. Hengerer's, a customer of the taxpayer, who purchased newspaper supplements wrote to the Buffalo office and requested advice about the newspaper supplements. The taxpayer's customer received a letter from the State Tax Commission, signed by a Senior Attorney of the Sales Tax Section, who also had been the former Director of Erie County sales tax. This letter was dated February 23, 1967, which advised:

"An advertising tabloid ordered from a newspaper and distributed by the newspaper is tax free; but, store copies are taxable. If the retailer purchases the tabloid from a printer and mails it to its customers, the purchase is subject to tax. If the retailer purchases the tabloid from a printer and furnishes it to the newspaper to be inserted in its regular editions, it is tax free if the tabloid carries the name of the newspaper. However, again I might add that store copies are taxable. If the tabloid does not carry the name of the newspaper, but is merely inserted in the paper and distributed, it would be taxable to the retailer."

10. The taxpayer relied on the information given by the State Tax Commission and the Director of the Sales Tax Bureau and the letter until 1967. It collected no sales tax for newspaper supplements sold to stores. In April of 1967, it requested a resale certificate from the W.T. Grant Co. The W.T. Grant Co., executive offices of New York City on April 7, 1967, wrote the taxpayer and stated it would not be able to furnish a resale certificate for in

checking with the State Department, Grants had been informed that the newspaper supplements delivered in New York State would be taxable and requested the taxpayer's comments.

11. On November 14, 1967, the taxpayer was informed by Grants that the Sales Tax Director had stated to Grants that circulars shipped to New York based newspaper plants for insertion as newspaper supplements were taxable to Grants.

12. The taxpayer continued to sell the supplements to other stores and deliver them to newspapers with the newspaper's name and date on the supplement and to do so without collecting sales tax from the other stores. A large national chain may purchase millions of these supplements with the names of the papers and dates on each supplement.

13. In a limited number of instances, the advertising supplement may contain editorial matter and timely articles of general interest, for example, a travel supplement, a gardening supplement with gardening articles, a fall household supplement with articles on housekeeping, or a sports supplement with articles on sports and similar advertising supplements with editorial content. In the case at hand we find that 5% of the advertising supplements were of this kind.

14. In 1970, an audit of the taxpayer was made and the sales tax here in issue proposed. The deficiency notice was issued thereafter. The tax, penalty and interest was paid and a refund requested.

15. The taxpayer acted in good faith throughout.

OPINION

The taxpayer contends that the advertising supplements are part of the newspaper and exempt as such or are exempt as part of the resale of the newspaper. The taxpayer cites the guarantee of freedom of the press and the determination of the post office that the supplement is part of the newspaper. The taxpayer states that the policy announced initially by the Commission at the workshop binds even today.

The Sales Tax Bureau argues that the advertising supplement is not part of a newspaper, is not for resale and there can be no estoppel whatsoever against the state under the circumstances.

This is a close question since the same newspaper supplement, purchased by the newspaper itself, is held not taxable by the Sales Tax Bureau. On the other hand, the Sales Tax Bureau deems the same supplement with the newspaper's name and date and delivered to the newspaper for insertion and distribution in the same way, but purchased by the store to be taxable.

Both supplements purchased by either the store or the paper go with the paper under the second class mailing permit of the newspaper.

We believe that since the advertising supplement containing all advertising which is purchased by the store is not purchased for resale to a retail customer, but is purchased by the store for distribution, it is subject to sales tax. Such an advertising supplement is primarily an advertising brochure even with the paper's name and date on it. A supplement with editorial matter in it, travel supplement with travel articles, gardening supplement with articles on gardening, etc., with a newspaper's name and date on it are tax exempt as newspapers.

CONCLUSIONS OF LAW

A. The taxpayer acted in good faith throughout, and all penalties are cancelled.

B. For a part of the time the taxpayer properly relied upon the advice given by the State Tax Commission and the Director of the Sales Tax Bureau and did not collect sales tax from stores buying dated newspaper advertising supplements to be distributed with the newspapers.

The courts have prevented the tax officials from demanding a sales tax from a vendor after the tax officials have told the vendor not to collect the tax. Hoffman v. City of Syracuse,

2 N.Y. 2d 484 at 491. This reliance properly extended until November 17, 1967, when the taxpayer was advised by Grants' letter dated November 14, 1967, of the Sales Tax Bureau's decision to tax newspaper advertising supplements purchased by stores and distributed with the newspapers. The taxpayer is not liable for sales tax on dated newspaper advertising supplements sold prior to November 17, 1967.

C. In the main, the sale of newspaper advertising supplements by taxpayer with the paper's name and date sold to stores and delivered to newspapers for distribution with the newspaper after November 17, 1967, was subject to sales tax. Approximately 5% of the supplements contained editorial matter and general articles and the deficiencies in sales tax after November 17, 1967, are reduced by those amounts.

D. The taxpayer could not presume to rely exclusively on the old advice after November 17, 1967, and after that date the taxpayer is liable for sales tax, on newspaper advertising supplements with the newspaper's name and date, sold to stores and delivered to newspapers for insertion and distribution in the newspapers.

E. A refund for the portion of sales tax paid for the periods and sales here in issue prior to November 17, 1967, is granted.

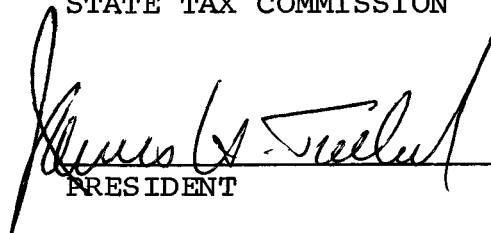
F. The deficiencies in sales tax for the sales and periods in issue after November 17, 1967, are sustained except that 5%

of the supplements are tax exempt as newspapers.

G. Pursuant to the Tax Law interest shall be due on the refund or deficiency in sales tax due until paid when recomputed in accord with this determination.

DATED: Albany, New York
August 24, 1976

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER