

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

G & B PUBLISHING CO., INC.

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~~ Periods May 8,
1966 through November 30, 1973.

AFFIDAVIT OF MAILING
OF NOTICE OF ~~XXXXXX~~ DETERMINATION
BY ~~(CERTIFIED)~~ MAIL
REGULAR

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 26th day of November, 1975, she served the within
Notice of ~~XXXXXX~~ (regular Determination) by ~~(certified)~~ regular mail upon G & B PUBLISHING
CO., INC., ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: G & B Publishing Co., Inc.
1437 Front Street
Chenango Bridge, New York 13745
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 ~~XXXXXX~~
~~xxx~~ 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

26th day of November, 1975.

Mary Greff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~
Application :

of

G & B PUBLISHING CO., INC. :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION DETERMINATION
BY ~~(REGISTERED)~~ MAIL
REGULAR

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 ~~Years~~ Periods May 8, :
1966 through November 30, 1973.

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 26th day of November , 1975, she served the within

Notice of ~~Decision~~ (regular
~~Determination~~) by ~~(REGISTERED)~~ mail upon Stewart E. Walls, Esq.

, (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Stewart E. Walls, Esq.
59-61 Court Street
P.O. Box 1865

Binghamton, N. Y. 13902

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

26th day of November , 1975.

Mary Sheff

Janet Mack



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO
Mr. Wright
Mr. Coburn
Mr. Leisner
(518) 457-3336

Albany, New York
DATED: November 26, 1975

G & B Publishing Company, Inc.
1437 Front Street
Chenango Bridge, New York

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,

L. Robert Leisner
L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

In the Matter of the Application :
of :
G & B PUBLISHING CO., INC. :
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 May 8, 1966 through :
November 30, 1973. :

DETERMINATION

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Binghamton, New York, on October 10, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Stewart E. Walls, Esq. and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

Were the publishers' purchases of a free weekly shopper from a printer exempt from sales tax as a 1) newspaper or as 2) advertising services?

FINDINGS OF FACT

1. The taxpayer, G & B Publishing Co., Inc., timely filed New York State sales and use tax returns for the periods May 8, 1966 through November 30, 1973.

2. A Notice of Determination of sales and use taxes (and penalties) for the periods May 8, 1966 through November 30, 1973, was issued on February 8, 1974, against G & B Publishing Co., Inc. under Notice No. NY7454139.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax.

4. By agreement the statute of limitation is applicable to all taxes prior to December 1, 1970.

5. The taxpayer, G & B Publishing Co., Inc., printed weekly shoppers for Binghamton, Johnson City and Endicott, which were distributed free to readers, with an approximate circulation of sixty thousand. The shoppers are filled with advertising but they contain church requests, educational schedules, bus routes, tax hearings on school districts, bake sales, which are on a space available basis. To be sure of being in the shopper in all events, the announcement should be paid for, but it will be printed free for a church, boy scouts and other civic, church or charitable organizations, if there is space left over. The taxpayer occasionally ran a poll in conjunction with a state publisher's association and some filler articles.

6. The taxpayer contends that the printed shopper is a tax exempt newspaper or periodical (section 1115(a)(5)) of the Tax Law, or is tax exempt as advertising services under section 1105(e)(1) of the Tax Law.

7. The taxpayer believed the purchases in issue were tax exempt as newspapers or advertising services.

OPINION

A free weekly shopper, or pennysaver is not tax exempt as a newspaper. (Hermenet v. Wynkle, 64 Misc. 2d 57). An advertising giveaway is not tax exempt as a newspaper even though it contains a modicum of local news and other material found in a local newspaper. Green v. Home News Publishing Co., Fla., 90 So. 2d 295; Gen. Construction Law, section 60.

CONCLUSIONS OF LAW

A. A free weekly shopper or pennysaver is not tax exempt as a newspaper. The publisher's purchases of the shopper or pennysaver from a printer are subject to sales tax.

B. The purchases of ink, paper, etc. for the pennysaver or shopper are subject to tax.

C. The exemption for advertising services does not cover the bulk purchase of shoppers or pennysavers, the purchase is taxable as a purchase printed material.

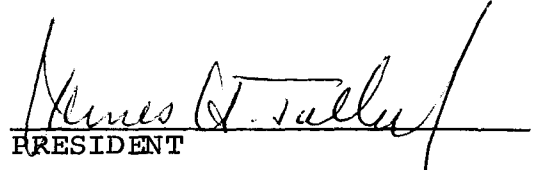
D. The periods prior to December 1, 1970, are limited by law and the tax penalties and interest for such periods prior to December 1, 1970, are cancelled.

E. The taxpayer acted in good faith and the penalties are cancelled.

F. Pursuant to the Tax Law, the deficiency in sales tax and interest for the periods after December 1, 1970, are otherwise sustained.

DATED: Albany, New York
November 26, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER