

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WESTERN NEW YORK HOSPITAL TELEVISION,
INC.

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

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

State of New York
County of Albany

Martha Funaro , 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 6th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Western New York
Hospital Television, Inc. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Western New York Hospital
Television, Inc.
210 Franklin Street
Buffalo, New York 14202
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

6th day of February , 1974.

James S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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Taxes under Article(s) 28 & 29 of the
Tax Law for the (Year(s)/Periods
August 1, 1965 through August 31, 1970.

State of New York
County of Albany

Martha Funaro , 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 6th day of February , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Miller, Farmelo &
Knoll
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Miller, Farmelo & Knoll
1500 Liberty Bank Building
Buffalo, New York 14202

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

6th day of February, 1974

James L. Van Patten

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 6, 1974

**Western New York Hospital
Television, Inc.
210 Franklin Street
Buffalo, New York 14202**

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.

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

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
WESTERN NEW YORK HOSPITAL TELEVISION, 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, Western New York Hospital Television, Inc., 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, Buffalo, New York, on April 21, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Miller, Farmelo and Knoll, and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Are rentals of television sets to hospital patients subject to sales and use tax?

FINDINGS OF FACT

1. The taxpayer, Western New York Hospital Television, 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 periods August 1, 1965 through August 31, 1970, was issued on February 2, 1971, against Western New York Hospital Television, Inc., under Notice No. 90,744,624.

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

4. The taxpayer rented television sets in various hospitals to the hospital patients and contended that no tax was due on the rentals. The taxpayer claimed that it was not engaged in the rental of television sets since no transfer of title, possession or use occurred. Instead, the vendor insisted that it was engaged in the nontaxable service of providing entertainment to hospital patients.

5. The taxpayer, Western New York Hospital Television, Inc., provides television to patients in hospitals. According to representatives of the corporation, the television sets are permanently mounted in each hospital room. The sets are serviced by a master antenna system with the antenna cables and other wiring built into the walls of the rooms.

6. A representative of the taxpayer is available at each hospital in which the vendor has installed television sets. Her duties include the sale of the rental of the television sets, regular visits to see that the set is operating properly, and the collection of the rental fee at the termination of the rental.

7. If a patient desires to rent the television set, the representative activates the set with a key which remains in her possession. With this key the set can be made operable or inoperable at any time. When the set has been activated, the patient is furnished a remote control unit with which the set can be turned on or off, the volume controlled and the viewing channel selected. In some cases, these remote control units include pillow speakers, call buttons to summon the nurse and in some instances, even include devices by which the patient can talk to the nurse on duty.

8. The corporation registered as a vendor in 1965. The vendor's filing record was excellent through the quarter ending August 31, 1968. At that time, the corporation decided it was exempt from the tax as a result of the "Bathrick" case and it filed no returns nor has it remitted any tax from that time. Estimated assessments were issued for the periods ending November 30, 1968 and February 28, 1969, as the result of the vendor's failure to file returns. The vendor protested these assessments and claimed a refund of the tax already remitted for prior periods, claiming exemption under the "Bathrick" case.

9. The taxpayer asserted that its customer did not have possession of the set. The set was permanently mounted in the room. If the patient changed rooms, he changed sets. In addition, the customer had no choice of size, make or model, but must use the set mounted in his particular room.

10. Further, the taxpayer claimed that the patient could not activate or inactivate the set. This could only be done by the taxpayer's representatives. The customer could turn the set on or off, adjust the volume or select a channel through his remote control unit, but the vendor claimed this was no more than could be done by a person using a coin operated music device, where the customer inserts a coin to start a record playing and selects the record to be played by pushing a button. The taxpayer insisted that its operation exactly paralleled the amusement devices considered in the "Bathrick" case. That the fact that his customers were billed for the service based on the number of days rented rather than operating the set by depositing coins was immaterial. Its representative merely replaced the coin device and collected the money due.

11. The taxpayer further stated that to tax its operation would be unfair since some hospitals have exactly similar systems installed and include the charge for the television service in their room rates. The room charge by the hospital is not taxable.

In addition, some of their new installations are hooked right into the hospital public address and closed circuit television systems so that, in these installations, some channels are available to all the patients free of charge. The taxpayer asserts that this type of installation must certainly be considered to be a service rather than a sale of tangible personal property. Rentals are based on the number of days used and the same rental

fee applied to all the sets in a given hospital regardless of the size or age of the set. Refunds are given if the full rental period is not used.

CONCLUSIONS OF LAW

A. The rental of television sets to hospital patients is subject to sales and use taxes. American Locker Co. v. Gallman.


B. The taxpayers acted in good faith in questioning the assessment and the penalty is cancelled.

C. The sales tax assessments are in all other respects sustained.

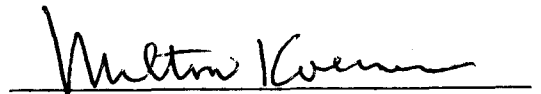
D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
February 6, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER