

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SENECA FALLS PENNYSAVER

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period 3/1/67:-
2/28/70.

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

State of New York
County of Albany

MARY GROFF, 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 3rd day of December, 1975, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon SENECA FALLS
PENNYSAVER ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Seneca Falls Pennysaver
56 Miller Street
Seneca Falls, New York
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)~~
~~or~~ 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

3rd day of December, 1975

Janet Mack

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SENECA FALLS PENNYSAVER

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 & 29 of the
Tax Law for the ~~years~~ Period 3/1/67 +
2/28/70.

State of New York
County of Albany

MARY GROFF, 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 3rd day of December, 1975, she served the within
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon ARTHUR I. SELD, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:
Arthur I. Seld, Esq.
First National Bank Building
Riverview Plaza
P.O. Box 354
Seneca Falls, New York 13148

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

3rd day of December, 1975

Janet Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

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

AREA CODE 518

DATED: Albany, New York
December 3, 1975

ADDRESS YOUR REPLY TO

Mr. Wright
Mr. Leisner
Mr. Coburn
(518) 457-3336

Seneca Falls Penny Saver
56 Miller Street
Seneca Falls, 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 & 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

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

The case was submitted for decision on the information presented in taxpayer's file and referred to L. Robert Lesiner, Hearing Officer, for review. The taxpayers were represented by Arthur I. Seld, Esq. and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the Seneca Falls Pennysaver should pay sales tax on the paper and ink and other materials used to produce the Seneca Falls Pennysaver.

FINDINGS OF FACT

1. The taxpayer, Seneca Falls Pennysaver, timely filed New York State sales and use tax returns for the periods March 1, 1967 to February 28, 1970.

2. A Notice of Determination of sales and use taxes and penalties for the periods March 1, 1967 to February 28, 1970, was issued on June 12, 1970, against Seneca Falls Pennysaver under Notice No. 15-0524622.

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

4. The Seneca Falls Pennysaver, Inc. is in the business of both job printing and printing or photocopying a booklet which consists of advertising material called the Seneca Falls Pennysaver

5. For the years in question, the Seneca Falls Pennysaver, Inc. has paid any and all sales taxes on their job printing.

6. The issue herein is whether or not the Seneca Falls Pennysaver, Inc. should pay sales tax on the paper and the ink and the other materials that go into preparing the booklet called the Seneca Falls Pennysaver.

7. The said booklet, the Seneca Falls Pennysaver, is given away free, without any charge.

8. The profits made from said Pennysaver is in the sale of the ads to the various merchants that advertise in said booklet.

9. The said Seneca Falls Pennysaver comes out each and every week on Wednesdays on a regular basis.

10. The taxpayer contends that the material purchases for the Seneca Falls Pennysaver should not be subject to sales tax being a component part of a manufactured product or of a newspaper or of an item for resale. The taxpayer acting in good faith did not pay tax on these materials.

CONCLUSIONS OF LAW

A. The Seneca Falls Pennysaver is not a newspaper. Hermenet v. Wykie, 64 Misc. 2d 57; General Construction v. Law, section 60. It is a free advertising booklet and is not resold as a newspaper.

B. The materials used in producing the Seneca Falls Pennysaver do not become part of a manufactured or finished product which is for sale.

C. The purchases of materials to produce the Seneca Falls Pennysaver are not exempt under section 1101(b)(4)(i) nor under section 1115(a)(12) of the Tax Law.

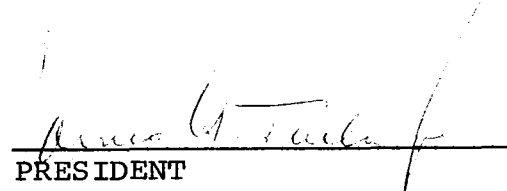
D. The taxpayer acted in good faith in failing to pay the tax in issue and the penalty is cancelled.

E. The deficiencies in sales taxes are sustained and the taxpayer's application is denied.

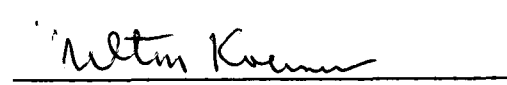
F. Pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York
December 3, 1975

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER

COMMISSIONER