

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~PETITION~~
Application :

of
SIDNEY SCHULMAN, Individually and :
as President of TRANSPARENT BAG CO. :
of BUFFALO, INC. :

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 8/1/65-
10/30/69.

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 25th day of November , 1975, she served the within

Notice of ~~Deficiency~~ (or Determination) by ~~(certified)~~ mail upon ^{SIDNEY SCHULMAN,} Individually and as
President of TRANSPARENT
BAG CO. of BUFFALO, INC. (~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: ^{Sidney Schulman, President}
^{Transparent Bag Company of}
Buffalo, Inc.
21 Fay Street
Buffalo, New York 14211

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

25th day of November , 1975.

Janet Mack

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Reduction~~
Application :

of
SIDNEY SCHULMAN, Individually and :
as President of TRANSPARENT BAG CO. :
Of BUFFALO, INC. :

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 8/1/65-
10/30/69.

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 25th day of November , 19 75, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(CERTIFIED)~~ mail upon DONALD W. MILLER, CPA

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Donald W. Miller, C.P.A.,
Leonard A. Dopkins & Co., C.P.A.'s
3407 Delaware Avenue
Buffalo, New York 14217

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

25th day of November , 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

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

DATED: Albany, New York
November 25, 1975

Mr. Sidney Schulman, President
Transparent Bag Company of Buffalo, Inc.
21 Fay Street
Buffalo, New York 14211

Dear Mr. Schulman:

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
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
SIDNEY SCHULMAN, Individually and as :
President of TRANSPARENT BAG CO. OF : DETERMINATION
BUFFALO, 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 Period 8/1/65 through 10/30/69. :

Applicant, Sidney Schulman, individually and as president of Transparent Bag Co. of Buffalo, 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 period 8/1/65 through 10/30/69.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on February 7, 1973, at 9:30 A.M. before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Donald W. Miller, C.P.A., and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUES

I. Whether electricity supplied to the taxpayer through his landlord was subject to sales tax under section 1105(b) of the Tax Law.

II. Whether printing plates owned by the customer but held by the taxpayer and used to imprint plastic bags were subject to a manufacturing exemption pursuant to section 1115(a)(12) of the Tax Law.

FINDINGS OF FACT

1. The taxpayer, Sidney Schulman, individually and as president of Transparent Bag Co. of Buffalo, Inc., timely filed New York State sales and use tax returns for the period 8/1/65 through 10/30/69.

2. A Notice of Determination of sales and use taxes (and penalties) for the period 8/1/65 through 10/30/69 was issued on November 25, 1970, against the taxpayer under Notice No. 90,743,801.

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

4. Taxpayer was the president of Transparent Bag Co. of Buffalo, Inc. The company imprints plastic bags with various slogans and trade names supplied to it from its customers. The slogans and trade names are cast into what is known as printing dies which in turn are attached to printing presses and the imprinted plastic bags are turned out. Transparent Bag Co. of Buffalo, Inc.'s customers used these bags to package fruit, vegetables and other commodities desiring clear plastic packaging.

5. The printing dies, in most cases, are kept within the custody and control of the taxpayer's corporation. The ownership of the dies are divided into two types. The first type is that in which the corporation owns the dies. These dies are treated as fixed assets and the corporation has determined that as such, they have a useful life of three years, and these dies were not taxable. The second type is that in which the customer owns the die. The corporation purchases the dies from the manufacturer and resells them, under separate billing, to the customer. In most cases, the customer never takes possession but he is allowed to do so. The dies are not functional once they are detached from the printing press. It was this second type of ownership that was held subject to sales tax.

6. The taxpayer's corporation leased space from the Saperston Real Estate Company in order to conduct its printing operations. The building in question had many tenants and a master power source.

As a result of this master power source, the landlord established a procedure whereby he would take the total dollar amount of the power company's billing for electricity and all sales taxes and divide that amount by the kilowatt-hours and use the rate per kilowatt-hour to compute the monthly electric charges. The taxpayer paid the monthly charge thus computed.

7. The taxpayer honestly believed that the items here in controversy were not subject to sales tax.

CONCLUSIONS OF LAW

A. Since the taxpayer's pro rata payment was for both electric power and taxes, it was not subject to additional sales tax under section 1105 (b) of the Tax Law.

B. That the sale of printing dies, under separate billing, to the taxpayer's customers constituted a retail sale of the dies and without an exemption certificate, it is taxable at the rate in effect at the taxpayer's place of business.

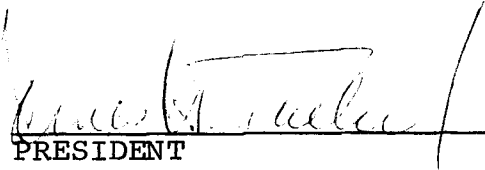
C. The deficiency as modified is sustained and the taxpayer's application is in all other respects denied.

D. Since the taxpayer acted in good faith regarding the filing of sales tax returns, the penalty is cancelled and remanded.

E. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York
November 25, 1975

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER