

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
STANDARD RATE & DATA SERVICE, 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) :
September 1, 1969 through August 31, 1972.

State of New York
County of Albany

Marsina Donnini , 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 16th day of August , 1977 , she served the within

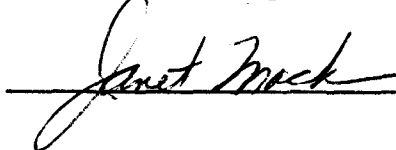
Notice of Determination by ~~(certified)~~ mail upon Standard Rate & Data Service,
Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Standard Rate & Data Service, Inc.
5201 Old Orchard Road
Skokie, Illinois 60076

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)~~
~~XXXXXX~~ 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

16th day of August , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANDARD RATE & DATA SERVICE, 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 ~~YEAR(S)~~ Period(s)
September 1, 1969 through August 31, 1972

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within

Notice of Determination by ~~certified~~ mail upon Robert A. Saltzstein, Esqs. of
Cadwalader, Wickersham &
Taft, Esqs. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Terrence F. Gilheany & Robert A. Saltzstein, Esqs. of
Cadwalader, Wickersham & Taft, Esqs.

One Wall Street

New York, New York 10005

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

16th day of August, 1977.

Marsina Donnini

Janet Trach



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 16, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Standard Rate & Data Service, Inc.
5201 Old Orchard Road
Skokie, Illinois 60076

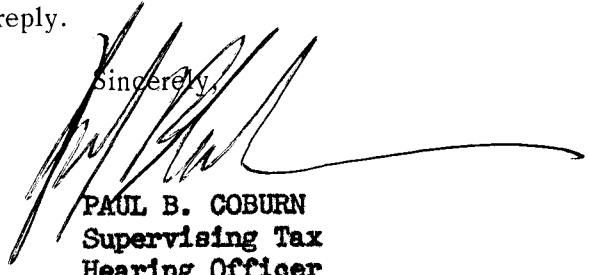
Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



PAUL B. COBURN
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
STANDARD RATE & DATA SERVICE, INC. : DETERMINATION
for Revision of a Determination or for :
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Periods September 1, 1969 through :
August 31, 1972. :

The applicant, Standard Rate & Data Service, Inc., 5201 Old Orchard Road, Skokie, Illinois 60076, filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law. (File No. 01899)

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 22, 1975 at 9:30 A.M. and continued on February 6, 1976 at 9:00 A.M..

The applicant appeared by Cadwalader, Wickersham & Taft, Esq. (Terrence F. Gilheany, Esq. and Robert A. Saltzstein, Esq., of counsel). The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel).

PRELIMINARY STATEMENT

Although the applicant originally raised a question as to the constitutionality of the imposition of the sales and use taxes in issue, that question was decided by the U.S. Supreme Court in the decision of National Geographic Society v. California Board of Equalization, decided April 4, 1977, and is no longer in issue.

ISSUES

I. Whether certain publications of the applicant constitute "periodicals" exempt from sales and use taxes.

II. Whether certain publications of the applicant constitute taxable information services.

III. Whether certain publications of the applicant constitute taxable receipts from retail sales of tangible personal property.

FINDINGS OF FACT

1. On September 11, 1972, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Standard Rate & Data Service, Inc., hereinafter referred to as SRDS, for the period September 1, 1969 through August 31, 1972 (notice #90,003,980), imposing additional sales and use taxes in the amount of \$90,950.60, plus penalty and interest of \$20,107.39, for a total of \$111,057.99. The applicant timely filed a request for a hearing to review the aforesaid determination.

2. The notice of determination is predicated on the theory that none of the publications of SRDS is a periodical exempt from the sales and use tax within the intent and meaning of sections 1115(a)(5) and 1110(A).

3. SRDS is a publishing company which gathers and compiles data and information about various media organizations such as radio and television stations, newspapers, magazines, etc. and publishes this material according to a particular format in a number of publications, i.e., (1) Spot Radio Rates and Data (monthly), (2) Spot Television Rates and Data (monthly), (3) Consumer Magazine & Farm Publication Rates & Data (monthly), (4) Newspaper Rates & Data (monthly), (5) Business Publication Rates & Data (monthly), (6) Network Rates & Data (monthly), (7) Transit Advertising Rates & Data (quarterly), (8) Print Media Production Rates & Data (quarterly), (9) Weekly Newspaper Rates & Data (semi-annually), (10) Direct Mail List Rates & Data (semi-annually), (11) Newspaper Circulation Analysis (annually).

4. Spot Radio Rates and Data contains lists of approximately 4,350 AM stations and 1,900 FM radio stations. Radio station listings are arranged by state, city and station call letters. Each listing contains rates, special features, facilities, commissions, participating programs and station representatives, all

arranged under 10 uniform, numbered headings. It contains lists of stations offering Negro, foreign language and farm programming. It also contains SRDS market data estimates of population, households, income, retail and store-type sales and other media/market indicators for states, counties, cities and metro areas, plus state media/market maps.

5. Business Publications Rates and Data includes listings of more than 3,000 business, trade and technical publications in the U. S., arranged by 173 "Market Service" classifications. Each listing includes publisher's statement of editorial purpose, advertising rates, contract and copy regulations, mechanical requirements, issuance and closing dates and circulation statements all arranged under 18 uniform, numbered headings. Also included is a listing of over 200 international publications used frequently by U. S. advertisers, and an index to annual, semi-annual and biennial publications.

6. Consumer Magazine and Farm Publication Rates and Data contains rate and data listings for more than 850 consumer magazines and 200 farm publications arranged alphabetically in approximately 60 classifications. Each listing contains editorial profile, advertising rates, discounts, mechanical requirements, copy regulations, circulation, personnel (plus issuance and closing dates), all arranged under 18 uniform, numbered headings. The farm section also contains

SRDS market data estimates of farm population, households, gross farm income, income from livestock, crops and poultry for all U. S. census regions.

7. Network Rates and Data is a handy pocket-sized edition that contains listings of radio and television network rates and data.

8. Newspaper Rates and Data lists over 1,600 daily and Sunday newspapers in the U. S. and its possessions. Each newspaper listing contains advertising rates, special features, contract and copy regulations, mechanical measurements, circulation, etc. all arranged under 16 uniform, numbered headings. In each monthly edition are SRDS estimates of population, households, income, retail and store-type sales and other media/market indicators for states, counties, cities and metro areas, plus state/media market maps.

9. Print Media Production Rates and Data contains listings of production data organized into three sections: (1) business publications, (2) consumer and farm publications, and (3) daily newspapers. The listings in the business publication section are arranged alphabetically under "Editorial Content" classifications. The listings contained in the daily newspaper section are first separated into seven, broad media categories, and then listed alphabetically by state and city. Each business, consumer and farm

publication listing contains general shippings instructions, printing process, production personnel, dimensions, binding method, printing specifications, inserts, bleed, special issues and issue and closing dates, all arranged under uniform headings.

10. Sport Television Rates and Data provides complete listings of time rates and pertinent data for every commercially-licensed television station in the U. S. arranged by state, city and call letters. Each station listing gives buyer information about rates, special features, closing times, facilities, commissions, and participating programs. ID specifications and station representatives, all arranged under 13 uniform, numbered headings.

11. Transit Advertising Rates and Data contains more than 220 transit listings arranged in geographic/alphabetical order. The listing includes branch offices, transit lines, communities served, card requirements, advertising rates, restrictions and circulation, etc., all arranged under 9 uniform numbered headings. This publication is an information source book for all agencies and advertisers interested in national and regional transportation advertising.

12. Some of the publications referred to in Findings of Fact "4" through "11", supra, indicated that they were a service of Standard Rate & Data Service, Inc.

13. None of the publications referred to in Findings of Fact "4" through "11" contain a variety of articles by different authors devoted to literature, the sciences or the arts, some special industry, profession, sport or other fields of endeavor.

CONCLUSIONS OF LAW

A. That in order to constitute a periodical, a publication must conform generally to the following requirements:

- a) It must be published at stated intervals, at least as frequently as four times a year,
- b) It must have the element of general availability to the public,
- c) It must have continuity as to title and general nature of content from issue to issue,
- d) It must not, either singly or, when successive issues are put together, constitute a book, and
- e) Each number must contain a variety of articles by different authors devoted to literature, the sciences or the arts, some special industry, profession, sport or other fields of industry."

(Sales Tax Information Letter No. 10, Sept. 15, 1965 - 2 CCH State Tax Rep. N. Y. paragraphs 64-120, 64-121 - 1965; Article 44, N.Y.C. Comptroller's Rules and Regulations for City Sales Tax; Houghton v. Payne, 194 U. S. 94, 97; Business Statistics Organization Inc. v. Joseph, 299 N. Y. 443, 450.)

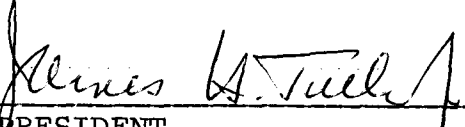
B. That three of the publications of the applicant, SRDS, viz., Weekly Newspaper Rates and Data, Direct Mail List Rates and Data and Newspaper Circulation Analysis are not periodicals since they are published less than four times a year; that said publications constitute the retail sale of tangible personal property subject to sales tax or, in the alternative, the furnishing of information by printed matter within the intent and meaning of section 1105(c) of the Tax Law.

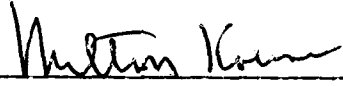
C. That the publications of the applicant, SRDS, more fully described in Findings of Fact "4" through "11" do not constitute "periodicals" exempt from sales and use taxes, in accordance with the provisions of sections 1105(a) and 1110(A) of the Tax Law; that the aforementioned publications constitute the services of collecting, compiling and analyzing information for the buyers of media advertising, taxable within the intent and meaning of section 1105(c)(1) or, in the alternative, the aforesaid publications constitute receipts from retail sales of tangible personal property pursuant to section 1105(a) of the Tax Law.

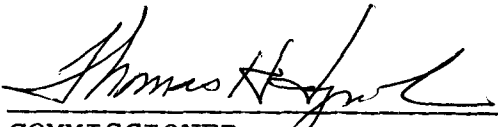
D. That the application of Standard Rate & Data Service Inc. be and the same is hereby denied. Additional interest shall be added until paid.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER