

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ANTHONY J. PETRUCELLI, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ or Period(s) :  
8/1/65 -- 2/28/69

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26 day of April, 1977, he served the within  
Notice of Determination by (~~certified~~) mail upon Anthony J.

Petrucelli, Inc. (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Anthony J. Petrucelli, Inc.  
103 Fifth Avenue  
New York, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
~~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

26 day of April, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY J. PETRUCELLI, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 and 29 of the :  
Tax Law for the ~~XXXXXX~~ or Period(s) :

8/1/65 -- 2/28/69

State of New York  
County of Albany

Bruce Batchelor , 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 26 day of April , 1977, ~~she~~ served the within  
Notice of Determination by (~~certified~~) mail upon George T. Greenfield, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: George T. Greenfield, Esq.  
2 Pennsylvania Plaza  
New York, New York 10001

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

26 day of April , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

April 26, 1977

TELEPHONE: (516) **457-1723**

Anthony J. Petrucelli, Inc.  
103 Fifth Avenue  
New York, 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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

**Frank J. Puccia**  
**Supervisor of**  
**Small Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
ANTHONY J. PETRUCELLI, 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 Period August 1, 1965 through	:	
February 28, 1969.	:	

---

Applicant, Anthony J. Petrucelli, Inc., 103 Fifth Avenue, New York, New York, 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 for the period August 1, 1965 through February 28, 1969. A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 15, 1976, at 9:15 a.m. Applicant appeared by George T. Greenfield, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Whether background props purchased and rented by applicant, Anthony J. Petrucelli, Inc., are subject to New York State sales and use tax?

FINDINGS OF FACT

1. On April 23, 1970, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Anthony J. Petrucelli, Inc., imposing additional tax due in the sum of \$1,326.00, plus penalty and interest of \$405.40. The aforesaid Notice of Determination and Demand resulted from an examination of applicant's books and records for the period August 1, 1965 through February 28, 1969 and represents tax deemed to be due on the purchase and rental of background props.

2. Applicant, Anthony J. Petrucelli, Inc., is a commercial photographer engaged in the sale of photographs to advertising agencies. The photographs are used by the advertising agencies for billboard and placard advertising of various products and require the creation of specific sets as background. A set consists of materials and objects known as background props and the furnishing of said props is the responsibility of applicant.

3. Applicant, Anthony J. Petrucelli, Inc., purchases and rents the materials and objects to be used as background props and includes their cost in its invoices to the advertising agencies. The advertising agencies do not take possession nor title of said background props.

4. Applicant, Anthony J. Petrucelli, Inc., contends that its purchase and rental of background props are for resale.

CONCLUSIONS OF LAW

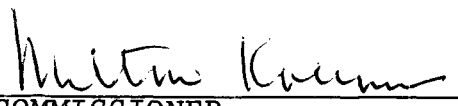
A. That, applicant, Anthony J. Petrucelli, Inc., purchases background props for its own use in connection with the performance of the service it renders and not for resale. The fact that the cost of said props is invoiced to the advertising agencies it sells to does not constitute a purchase for resale, but merely indicates the cost of said props is an element of the overall cost of performing its photographic service.

B. That, the application of Anthony J. Petrucelli, Inc. is denied and the Notice of Determination and Demand issued on April 23, 1970 is sustained.

DATED: Albany, New York  
April 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER