

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LAUX ADVERTISING, 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 ~~XXXXXX~~ Period(s) :  
September 1, 1971 - August 31, 1974

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 27 day of July, 1977, she served the within  
Notice of Determination by (~~certified~~) mail upon Laux Advertising, Inc.

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Laux Advertising, Inc.  
105 E. Seneca Street  
Ithaca, New York 14850

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~~  
~~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

27 day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LAUX ADVERTISING, 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)~~ Period(s) :  
September 1, 1971 - August 31, 1974

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 27 day of July, 1977, she served the within  
Notice of Determination by (certified) mail upon Everett Weiermiller,  
Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Everett Weiermiller, Esq.  
301 William Street  
Elmira, New York 14901

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

27 day of July, 1977.

Marsina Donnini

Janet Buck



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

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

July 27, 1977

**Laux Advertising, Inc.**  
**105 E. Seneca Street**  
**Ithaca, New York 14850**

**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,

**Joseph Chyrywaty**  
**Hearing Examiner**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
LAUX ADVERTISING, INC.	:	
for Revision of a Determination or for Refund	:	DETERMINATION
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Period September 1,	:	
1971 through August 31, 1974.	:	

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Applicant, Laux Advertising, Inc., 105 E. Seneca Street, Ithaca, New York 14850, 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 September 1, 1971 through August 31, 1974. (File No. 01534)

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, Binghamton, New York, on October 19, 1976 at 1:15 P.M. Applicant appeared by J. D. Laux, President, and Everett Weiermiller, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

#### ISSUES

I. Whether the purchase of materials and services by the applicant, an advertising agency, used in preparing mechanicals are subject to the sales and/or use tax.

II. Whether applicant's charges for services rendered in connection with the sale of brochures and catalogs are subject to the sales tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant, Laux Advertising, Inc., is a general advertising agency. Business activities include the preparation of brochures, catalogs and mechanicals, as well as the placement of media advertising at the request of its clients. In the placement of advertising for its clients, the applicant prepares mechanicals. A mechanical is a piece of artwork with type or reproductions pasted on to it and represents a facsimile of the completed advertisement. When a mechanical is completed and accepted by the client, a photo negative is then made of it. This negative is made by an outside vendor who returns the mechanical to the applicant and forwards the negative to the advertising media. The mechanical is retained by the applicant for approximately one year or until the client requests that it be sent to him.

2. The Sales Tax Bureau audited the books and records of the applicant and determined additional tax due of \$5,794.18 on the purchase of materials used in preparing mechanicals, artwork and negatives used in connection with the sale of advertising services. The applicant did not pay tax on the purchase of these

items, but, rather, charged a sales tax to his client for the mechanicals, artwork and negatives. The Sales Tax Bureau also determined additional sales tax due of \$588.91 on sales of brochures. The applicant separately stated charges for in-house services rendered in connection with the sale of brochures and did not charge sales tax for such services. The Sales Tax Bureau asserted that these charges were part of the selling price of the brochures and were therefore taxable.

3. The Sales Tax Bureau deemed advertising agencies to be the ultimate consumer of materials purchased to perform advertising services and, therefore, has taken the position that advertising agencies are required to pay tax on their purchases of tangible personal property used by them in connection with the rendering of advertising services for their clients.

4. The applicant contended that title in the mechanicals, artwork and negatives is transferred to its clients; therefore, they have properly issued resale certificates when purchasing these items.

5. On August 18, 1965, the Sales Tax Bureau advised the applicant in writing that supplies such as engraver's plates, negatives, photographs and other materials were taxable when purchased by the applicant.

6. That the purchases of materials and services used by the applicant in providing his service as an advertising agent

were "retail sales" as defined in section 1101(b)(4) of the Tax Law and subject to the imposition of sales tax within the meaning and intent of section 1105(a) of the Tax Law.

7. That the charges for the preparation of brochures and catalogs is an element in the total selling price of these brochures and catalogs, and, therefore, this charge for preparation is a "receipt" as defined in section 1101(b)(3) of the Tax Law and subject to the imposition of sales tax within the meaning and intent of section 1105(a) of the Tax Law.

8. That the application of Laux Advertising, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 17, 1975 is sustained.

DATED: Albany, New York  
July 27, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER