

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BENNETT BROTHERS, 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) :
June 1, 1967 - May 31, 1970

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 28th day of February , 1977 , she served the within
Notice of Determination by (certified) mail upon Lawrence W. Pollack,
Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Lawrence W. Pollack, Esq.
Migdel, Tenney, Glass & Pollack, Esqs.
598 Madison Avenue
New York, New York 10022
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

28th day of February , 1977.

Bruce Batchelor

James T. Batchelor

STATE OF NEW YORK
STATE TAX COMMISSION

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June 1, 1967 - May 31, 1970

State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 28th day of February , 1977 , she served the within
Notice of Determination by (certified) mail upon Bennett Brothers,
Inc. ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bennett Brothers, Inc.
435 Hudson Street
New York, New York 10014

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.

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~~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

28th day of February , 1977.

Bruce Batchelor

James Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

February 28, 1977

TELEPHONE: (518) 457-1723

Bennett Brothers, Inc.
435 Hudson Street
New York, New York 10014

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,

PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BENNETT BROTHERS, 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 Periods June 1, 1967	:	
through May 31, 1970.	:	

Petitioner, Bennett Brothers, Inc., located at 435 Hudson Street, New York, New York 10014, filed a petition 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 June 1, 1967 through May 31, 1970. (File No. 01026).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 17, 1976 at 9:20 A.M. The petitioner appeared by Migdel, Tenney, Glass & Pollack, Esqs., (Lawrence W. Pollack, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq. of counsel).

ISSUE

Whether the petitioner, Bennett Brothers, Inc., a New York corporation, is liable for sales or use taxes with respect to catalogs distributed from outside the State of New York by mail to its customers or potential customers located within the State of New York.

FINDINGS OF FACT

1. On September 30, 1971, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Bennett Brothers, Inc., for the tax periods June 1, 1967 through May 31, 1970. The tax due amounted to \$23,170.53, plus penalty and interest of \$8,082.17, for a total allegedly due of \$31,252.70.

2. Petitioner, Bennett Brothers, Inc., is a corporation organized under the laws of the State of New York, and is engaged in the sale of general merchandise in New York and throughout the United States, through mail order catalogs or "blue books" (hard cover bound catalogs). It maintains a mail order distribution center, showroom and offices at 435 Hudson Street, New York City, and a mail order showroom at 485 Fifth Avenue, New York City. Orders for merchandise were accepted at the New York showrooms. Bennett Brothers, Inc. is a corporation organized under the laws of the State of Illinois and is engaged in the sale of general merchandise in Illinois and throughout the U.S., through mail order catalogs. It maintains a mail order warehouse and showroom at 30 E. Adams Street, Chicago, Illinois. The New York and Illinois corporations are separate entities with different officers, but with the same shareholders.

3. The petitioner, Bennett Brothers, Inc., purchases the paper for the production of the catalogs, who ship the same to Rank McNally in Indiana. The latter then collates, binds and completes the printed material and ships the books or catalogs via various truck lines to 26 post offices located throughout the country. The corporations furnish Rand McNally with mailing labels. The paper mills who supply the paper for the catalogs and the printers of the catalogs are both located outside the State. The catalogs were mailed from post offices located in Alabama, California, Colorado, Illinois, Florida, Indiana, Iowa, Maine, Minnesota, Missouri, North Carolina, Georgia, New Jersey, Oregon, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, Washington, New York, New York, Brooklyn, New York and Syracuse, New York. Petitioner, Bennett Brothers, Inc., of New York shares the cost of the books or catalogs with Bennett Brothers, Inc. of Chicago equally.

4. The mail order catalog or "Bennett Blue Book" indicates that potential customers may send in orders to the most convenient location, either New York, New York or Chicago, Illinois.

5. The distribution of the catalogs is made to industrial companies for employee incentive programs, prizes and awards, and for the general benefit of their employees. Dealers used the catalogs to supplement their own inventories. No charge is made by the petitioner for the catalogs.

6. The catalogs involved in the instant case were mailed by Rand McNally from out-of-state, directly to prospective customers located in the State of New York, without charge therefor.

7. The petitioner remits New York sales tax on merchandise sold in New York State.

8. The catalogs distributed in New York were used for the purpose of generating sales by the petitioner within the State of New York.

9. Petitioner's records disclosed the precise number of catalogs mailed into New York and the precise number of catalogs used by New York purchasers to purchase merchandise.

10. The Sales Tax Bureau computed a use tax based upon the proportion of New York sales to United States sales.

11. Stipulation # 4 provides that the Tax Commission does not impose a compensating use tax on catalogs distributed by a newspaper as a supplement thereof. No evidence was submitted to indicate that such catalogs are not printed by the newspaper as a part or supplement thereof, or that the said catalogs are printed or distributed by the merchandiser of the products described in the catalogs.

CONCLUSIONS OF LAW

A. That the catalogs were not purchased, processed or assembled by the petitioner, Bennett Brothers, Inc., for resale

within the State of New York and that, therefore, the catalogs in question were not and could not be subject to sales tax under Article 28 of the Tax Law.

B. That the petitioner, Bennett Brothers, Inc., exercised the right or power over the catalogs in directing the distributor to mail them to certain designated firms and individuals for the purpose of generating sales of merchandise or orders for merchandise within the State of New York.

C. That there was a taxable use of the catalogs by the petitioner, Bennett Brothers, Inc., within the State of New York, within the purview and meaning of sections 1110 and 1101(7) of the Tax Law.

D. That the Sales Tax Bureau's basis for computing the use tax is erroneous; that the use tax should be computed on the actual cost of the catalogs, exclusive of mailing costs; that the Sales Tax Bureau shall recompute the use tax based on the records of the petitioner, Bennett Brothers, Inc., with respect to the number of catalogs mailed or distributed into the State of New York during the audit periods herein.

E. That the petitioner, Bennett Brothers, Inc., acted in good faith and that, therefore, the penalty and additional interest imposed be and the same is hereby cancelled.

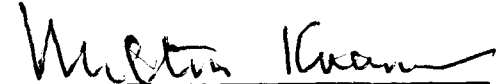
F. That the petition of Bennett Brothers, Inc. is granted to the extent indicated in Conclusions D and E and is in all other respects denied.

DATED: Albany, New York

February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

FORMAL HEARING

TA-26 (4-76) 25M

STATE OF NEW YORK

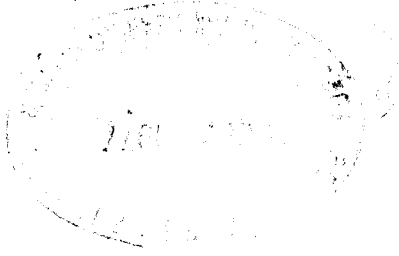
Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

Bennett Brothers, Inc.
435 Hudson Street
New York, New York 10014



HEM

100-130483 6/2-C



BOWLING GREEN
STATION

STATE OF NEW YORK
STATE TAX COMMISSION

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BENNETT BROTHERS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year(s) or Period(s) :
6/1/67 - 5/31/70

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 18th day of March , 1977, she served the within
Notice of Determination by (certified) mail upon Bennett Brothers, Inc.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bennett Brothers, Inc.
485 Fifth Avenue
New York, NY

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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

18th day of March , 1977.

Bruce Batchelor

Janet Mack