

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EAST GLENVILLE WEEKLY, 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 ~~XXXX(s)~~ Period(s) :
March 1, 1971 through February 28, 1974.

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 10th day of January , 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon East Glenville
Weekly, Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

East Glenville Weekly, Inc.
443 Saratoga Road
Scotia, 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~~
~~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

10th day of January , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EAST GLENVILLE WEEKLY, 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)
March 1, 1971 through February 28, 1974.

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 10th day of January, 1977, ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon Donald E. Shutt

(representative of) the petitioner in the within proceeding,

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

Donald E. Shutt, CPA
Louis Lombardi & Co.
34 Jay Street, P.O. Box 1053
Schenectady, New York 12305

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

10th day of January, 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

January 10, 1977

TELEPHONE: (518) **457-1723**

East Glenville Weekly, Inc.
443 Saratoga Road
Scotia, 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	:	
	:	
EAST GLENVILLE WEEKLY, 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 March 1, 1971 through	:	
February 28, 1974.	:	
	:	

Applicant, East Glenville Weekly, Inc., 443 Saratoga Road, Scotia, New York, has 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 periods March 1, 1971 through February 28, 1974.

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on July 30, 1976, at 10:45 A.M. Applicant appeared by Donald E. Shutt, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq. of counsel).

ISSUES

I. Were the applicant's purchases of paper and supply items used in the printing of a free weekly shopper exempt from the

sales and use taxes within the meaning of section 1115(a)(5) and or section 1118(5)?

II. Did the Sales Tax Bureau properly allocate the purchase of taxable and nontaxable printing supplies?

FINDINGS OF FACT

1. Applicant, East Glenville Weekly, Inc., filed New York State and local sales and use tax returns for the periods March 1, 1971 through February 28, 1972.

2. On May 22, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, East Glenville Weekly, Inc. This notice was the result of a field audit under which the Sales Tax Bureau asserted that paper, miscellaneous printing supplies and equipment purchases were subject to sales tax.

3. Applicant, East Glenville Weekly, Inc., is primarily engaged in the printing of a weekly shopping paper, which is distributed with no charge to the recipient. This weekly shopper consists of commercial advertisements and classified ads with occasional announcements, notes of public interest, or editorial comments. The applicant also performs other miscellaneous printing jobs.

4. The Sales Tax Bureau conducted an audit on the applicant, East Glenville Weekly, Inc., and held the purchases of paper, ink and supplies used in printing the weekly shopper subject to sales tax. In the cases where it was not readily determinable if the purchase of supplies were to be resold or used for the printing of the shopper, the Sales Tax Bureau made an allocation based on receipts from each operation.

5. The applicant, East Glenville Weekly, Inc., purchased tax free paper, ink and supplies used in the printing of the weekly shopper. The applicant contends that these purchases at issue were tax exempt within the meaning of sections 1115(a) and 1118(5) of the Tax Law. The applicant also contends that certain printing supplies were resold and that the method of allocation used by the Sales Tax Bureau to arrive at the supplies which were resold was incorrect.

6. The applicant, East Glenville Weekly, Inc., submitted sufficient evidence supporting their contention that purchases which were allocated as taxable by the Sales Tax Bureau should be reduced by \$11,529.12 and accordingly reduce the tax by \$461.16.

CONCLUSIONS OF LAW

A. That, the applicant's purchases of paper and supply items for use in the printing of the East Glenville Weekly, a free weekly

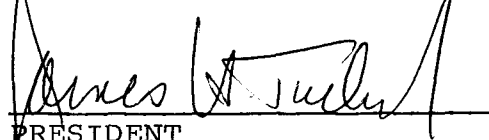
shopping paper, are not exempt from the imposition of sales and use taxes under sections 1115(a)(5) or 1118(5) of the Tax Law. A free weekly shopper is not tax exempt as a newspaper. (Hermet v. Wynkle, 64 Misc. 2d 57).

B. That, the allocation made by the Sales Tax Bureau of purchases exempt from the sales tax did not accurately reflect those exempt purchases and that the tax as originally computed should be reduced by \$461.16.

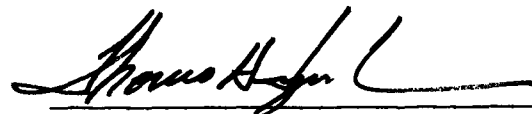
C. That, the application of East Glenville Weekly, Inc. is granted to the extent that the additional sales and use taxes due for the periods March 1, 1971 to February 28, 1974, be reduced from \$2,603.31 to \$2,142.15, together with such interest as may be lawfully owing, that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 22, 1974; and, that, except as so granted the application is in all other respects denied.

DATED: Albany, New York
January 10, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER