

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROCK COMPLEX, 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 Year ~~(s) XXXX Period(s)~~ :
1971.

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 December , 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Rock Complex, Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Rock Complex, Inc.
166 Lexington Avenue
New York, NY 10016

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
XXXXX last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

10th day of December , 1976

Bruce Batchelor

Janet 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

December 10, 1976

TELEPHONE: (518) **457-3850**

Rock Complex, Inc.
166 Lexington Avenue
New York, NY 10016

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1139 and 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

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ROCK COMPLEX, 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 Year 1971.	:	

Applicant, Rock Complex, Inc., 166 Lexington Avenue, New York, New York 10016, has filed an application for revision of determination or for a refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods December 1, 1969 through May 31, 1971 (Claim #9696, dated June 29, 1971). A small claims hearing was held before Joseph Marcus, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 8, 1976 at 1:15 p.m. Taxpayer was represented by Ms. Andrea Marshak (Hauser), Officer. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUES

I. Are sales taxes paid by taxpayer to his vendors on materials used in preparation of printing layouts properly taxable?

II. Are sales taxes (other than local New York City sales taxes) paid to vendors/lessors of typesetting machinery, refundable under section 1115(a)(12) of Article 28 of the Tax Law?

FINDINGS OF FACT

1. Applicant, Rock Complex, Inc., published and distributed a magazine known as "Rock" during the period under review and was registered with the Department of Taxation and Finance under I.D. #13-2642340.

2. In the course of its operations, applicant purchased and paid tax thereon of supplies, layouts and stats which were used in the setting up of plates and type (typography). These plates were sent to a printer who used them in the actual printing of the magazine. In most cases, after the magazine was printed, the plates and typography were destroyed.

3. As part of its operation, applicant rented typesetting equipment from I.B.M. It is the taxpayer's contention that the sales tax charged by I.B.M. was erroneous to the extent of the New York State portion included in the charge. Section 1115(a)(12) of the Tax Law provides an exemption for "machinery or equipment for use or consumption directly...in the production of tangible personal property...for sale..." (emphasis added). The I.B.M. equipment rented by petitioner was not used directly in the production process.

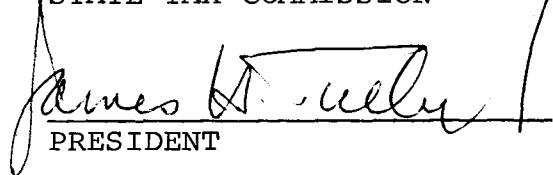
CONCLUSIONS OF LAW

A. That neither the supplies, layouts and stats purchased by petitioner, nor the I.B.M. Typesetting equipment rented by petitioner constituted machinery or equipment for use or consumption directly in the production of tangible personal property for sale, within the meaning and intent of section 1115(a)(12) of the Tax Law and are not, therefore, exempt from tax.

B. That the application of Rock Complex, Inc. is denied.

DATED: Albany, New York
December 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER