

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RENSSELAER COUNTY BOARD
OF REALTORS, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (~~CERTIFIED~~) MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the (~~Year(s)~~) period May 31, 1971 -
May 31, 1974

State of New York
County of Albany

Barbara Quirino, 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 23rd day of April, 1976, she served the within Notice of Decision (or Determination) by (~~certified~~) mail upon Rensselaer County Board of Realtors, Inc. (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Rensselaer County Board of Realtors, Inc.
15 Alva Street
East Greenbush, NY
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 Post Office Department within the State of New York.

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

23rd day of April, 1976

[Signature]

Barbara Quirino



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
April 23, 1976

**Rensselaer County Board
of Realtors, Inc.
15 Alva Street
East Greenbush, NY**

Gentlemen:

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

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

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,

Paul E. Coburn
Supervising Tax

HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
RENSSELAER COUNTY BOARD OF REALTORS, 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 May 31, 1971 through May 31, 1974.	:	

Applicant, Rensselaer County Board of Realtors, Inc., of 15 Alva Street, East Greenbush, 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 period May 31, 1971 through May 31, 1974.

The taxpayer filed a timely application for a refund of the alleged deficiency found as the result of an audit by the Sales Tax Bureau for which a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on August 16, 1974 for an amount of \$1,041.34 tax and \$75.24 interest for a total allegedly due of \$1,116.58. (File No. 90752925). The tax was paid under protest and a formal hearing was demanded and held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York on January 6, 1976 at 10:00 A.M. The applicant appeared by John H. Gurba, President, and James H. Fox, Executive Director. Peter Crotty, Jr., Esq. (Solomon Seis, Esq. of counsel) appeared for the Sales Tax Bureau.

ISSUES

I. Were the amounts paid by members of the Multiple Listing Service to the applicant, Rensselaer County Board of Realtors, Inc., as dues for use of listing picture books subject to sales and use tax under articles 28 and 29 of the Tax Law during the period May 31, 1971 through May 31, 1974?

II. Were printing services, and supplies purchased by applicant, Rensselaer County Board of Realtors, Inc., for use in furnishing Multiple Listing Service to Board members exempt from retail sales taxes as being purchases for resale?

III. Was applicant, Rensselaer County Board of Realtors, Inc., required under the Sales Tax Law to obtain a Certificate of Registration and Authority as a vendor?

FINDINGS OF FACT

1. Applicant, Rensselaer County Board of Realtors, Inc., (hereinafter referred to as Board) is a New York corporation organized under the Not For Profit Corporations Law as a trade association of real estate brokers, real estate sales persons and associates interested in aspects of real estate buying, selling, leasing, renting and managing real property principally in the County of Rensselaer and contiguous areas. During the period from May 31, 1971 through May 31, 1974 the Board operated a Multiple Listing Service limited to some members of the Board who paid separate annual dues for such service, and an additional sum for each printed listing picture book.

2. The information about properties listed with individual members of the Multiple Listing Service (hereinafter MLS) was furnished within a specified limited period of time as set forth in the Board's by-laws by each such member of MLS to the Board's Executive Director or designated Listing Secretary. This individual received reports as to location of properties, sales prices, descriptions, pictures, taxes and other details from realty agencies, Board members and MLS members. He compiled these reports, forwarded them to an out-of-state printer, and distributed the returned printed picture books of listings solely to MLS members.

3. The Board, through its Executive Director or Listing Secretary, made a charge to each MLS member for each picture listing book, such books having been up-dated every two weeks.

4. The Board expressly reserved to itself title to each picture listing book, giving to the individual MLS member the use of the picture book only so long as the Board so authorized.

5. The Board billed each MLS member for each picture listing book, denominating such charge as a "rental." The Board paid a sales or use tax on "rentals" paid for extra copies of the listing book furnished to MLS members.

CONCLUSIONS OF LAW

A. That dues and charges for listing books by the Board to MLS members constitute a "sale" under section 1101(b)(5) of the Tax Law as a "license to use" for a consideration.

B. That members of the Board subscribing to MLS constitute "other persons" within the scope of section 1105(c)(1) of the Tax Law to whom the Board furnishes information which is not personal in nature and which does not constitute advertising directed to the public.

C. That under section 1101(b)(8)(A) of the Tax Law, the applicant, Board, is a vendor as it is "A person making sales of tangible personal property or services, the receipts of which are taxed..." and as such is required to file a Certificate of Registration and Authority with the Sales Tax Bureau.

D. That therefore dues and charges by the applicant, Board, to MLS members are subject to retail sales tax which must be billed, collected and reported by applicant, Board.

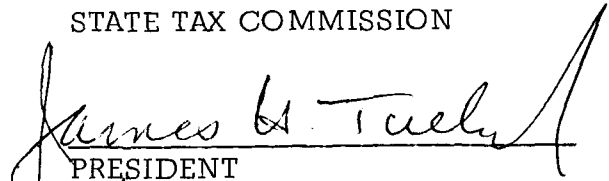
E. That the charges by the printer to applicant, Board, for printing the listing books are sales of either a tangible personal property under Section 1105(a) of the Tax Law or a charge for printing within the scope of Section 1105(c)(2) of the Tax Law. In either instance, the purchase by the applicant, Board, is a purchase for resale which is exempt from sales or use tax.

F. That the application of Rensselaer County Board of Realtors, Inc., for revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law is denied.

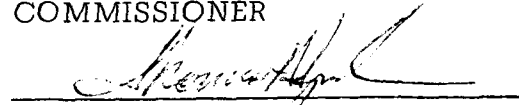
DATED: Albany, New York

April 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER