

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WEBR, INC. and QUEEN CITY RADIO CORP.

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 ~~Year(s)~~ Period(s) :
September 2, 1971.

State of New York
County of Albany

Catherine Steele, 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 26th day of August, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Webr, Inc.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Webr, Inc.
23 North Street
Buffalo, New York 14202

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)~~
~~(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

26th day of August, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WEBR, INC. and QUEEN CITY RADIO CORP.

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) :
September 2, 1971.

State of New York
County of Albany

Catherine Steele, 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 26th day of August, 1976, she served the within Notice of Determination by ~~(represented)~~ mail upon Queen City Radio Corp.

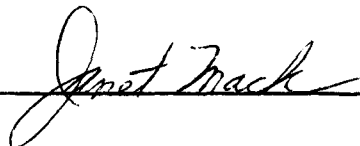
~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Queen City Radio Corp.
23 North Street
Buffalo, New York 14202

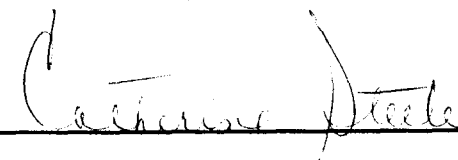
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

26th day of August, 1976.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

WEBR, INC. and QUEEN CITY RADIO CORP.

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 (X)
September 2, 1971.

State of New York
County of Albany

Catherine Steele, 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 26th day of August, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Alan Lipman, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Alan Lipman, Esq.
as follows: Kavinoky, Cook, Hepp, Sandler, Gardner & Wisbaum
120 Delaware Avenue
Buffalo, New York 14202

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

26th day of August, 1976

Janet Mack

Catherine Steele

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WEBR, INC. and QUEEN CITY RADIO CORP.

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 ~~(X)~~ :
September 2, 1971.

State of New York
County of Albany

Catherine Steele, 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 26th day of August, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Charles D. Tuppen, Jr.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Charles D. Tuppen, Jr., Esq.
as follows: Falk, Siemer, Glick, Tuppen & Maloney
Erie County Savings Bank Building
Main Place
Buffalo, 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.

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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

26th day of August, 1976.

Catherine Steele

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

August 26, 1976

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

Webb, Inc.
23 North Street
Buffalo, New York 14202

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 E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



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

August 26, 1976

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

Queen City Radio Corp.
23 North Street
Buffalo, New York 14202

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of the State Tax Commission enclosed herewith.

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Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
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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 TAX COMMISSION

In the Matter of the Application :
of :
WEBB, INC. AND QUEEN CITY RADIO CORP. : 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 September 2, 1971.

Applicants, Webr, Inc., 23 North Street, Buffalo, New York and Queen City Radio Corp., 23 North Street, Buffalo, New York, applied for a 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 2, 1971.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York on June 11, 1975 at 1:30 P.M. before L. Robert Leisner, Hearing Officer. Webr, Inc., appeared by Charles D. Tuppen Jr. Queen City Radio Corp., appeared by Alan Lipman, Esq. The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss Esq., of counsel).

What was the value of personal property sold by Webr, Inc. to Queen City Radio Corp. on September 2, 1971?

FINDINGS OF FACT

1. The taxpayers, Webr, Inc., and Queen City Radio Corp., timely filed New York State sales and use tax returns for the period involved.
2. A Notice of Determination of sales and use taxes (and penalties for \$27,592.84) for the period involved was issued on December 19, 1973 against Webr, Inc., and Queen City Radio Corp., under Notice No. 90,203,441.
3. The taxpayers applied for a revision of the determination of the deficiencies in sales tax.
4. On September 2, 1971 Webr, Inc. sold a radio station to Queen City Radio Corp. The seller reported the sale of the assets at book value of \$23,944.00.
5. The Sales Tax Bureau in its audit determined that value of the personal property sold was \$347,041.00. Its determination was based on an appraisal of assets based on market value at the time of sale.
6. The taxpayer asserted its bookkeeper had misconstrued appraisal reports. It also asserted that the appraisal reports also indicated that valuation of current cost less observable depreciation was \$151,210.00 at the time of the sale. The taxpayer asserted current cost less observable depreciation was the proper yardstick for valuation.

Several other methods also were among the records. They were "reproduction cost less depreciation", "turn-key value", and "appraised value".

7. Some of the personal property was located outside of the City of Buffalo and on the sale date a 6% sales tax rather than a 7% sales tax was applicable. Such property located outside of Buffalo represents \$135,732.00 of the \$347,041.00 and \$61,763.00 of the \$151,210.00.

8. The taxpayer asserted that the opinion of counsel of the Tax Department of New York State dated December 10, 1965 which limits the sales tax on television station tape and film rental to the value attributable to viewers in New York State should also be applicable in determining for sales tax purposes the value of a radio station attributable to the portion of its primary coverage area in New York State. The taxpayer presented uncontroverted evidence that only 37% of the primary coverage area of the radio station was in New York State.

9. The Sales Tax Bureau presented no proof on this issue but argued that the opinion should be limited to television tape and film rentals. Taxpayer asserted that to so limit the opinion would arbitrarily discriminate against radio stations and in favor of television stations.

10. The taxpayer argued that the federal government through the Federal Communication Commission and related agencies has pre-empted the states as far as the transferability of operating licenses for radio stations are concerned. To the extent New York State over-valuates the tangible property, it under-valuates the operating license for the Radio Station, WEBR, and, in effect, is taxing that operating license to the extent of the under-valuation. (Cf. Webber v. Virginia 103

U.S. 344, 347; McCullough v. Maryland 17 U.S. 316, 432(1819); Edison Elect. Illum. Co. vs. Assessor 156 N.Y. 417, 418 (1898) -- a radio license like a patent right, being a federal grant of privilege, is not subject to tax by a state.)

11. A number of modifications have previously been made to the assessment in issue and the taxpayer acting on the advice of counsel has acted in good faith.

CONCLUSIONS OF LAW

A. That the total sale price was arrived at in an arms length transaction. The sale price of \$1,750,000.00 was allocated to the various items of the sale with each item at market value. Market value clearly reflected the actual sale price. The sale price of the personal property sold was \$347,041.00.

B. That the use of the allocation formula respecting film rental for a viewing audience is limited to program rentals for a media and does not apply to the actual sale of personal property (desks, turntables, transmitters, etc.) within the State of New York.

C. That the market value applied to personal property does not undervalue the license and moreover, we do not believe that pointing indirectly to other intangible items (licenses, goodwill, etc.) should control the actual price or the true market value of personal property in question.

D. That the 7% rate should be modified to 6% of \$135,732.00 for the personal property, transmitter etc., located outside the City of Buffalo. (See paragraph 7 above).

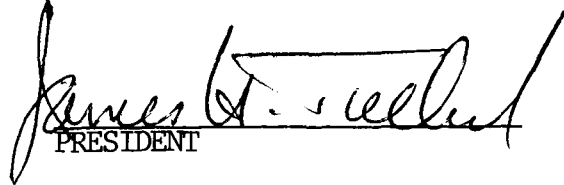
E. That the deficiency shall be recomputed as provided in paragraphs A. and D. above.

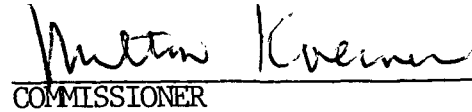
F. That the taxpayer acted in good faith and on the advice of his representative and therefore the penalties are cancelled.

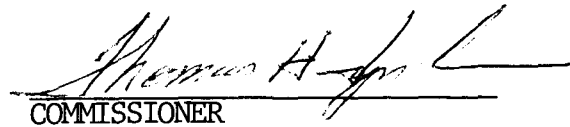
G. That pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, N.Y.
August 26, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER