

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RKO - STANLEY WARNER THEATERS, 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 ~~XXXXXX~~ Period(s) ending  
August 31, 1972 to November 30, 1975.

State of New York  
County of Albany

John Huhn, 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 13th day of December, 1978, ~~he~~ served the within  
Notice of Determination by ~~(XXXXXX)~~ mail upon RKO - Stanley Warner  
Theaters, Inc. (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: RKO - Stanley Warner Theaters, Inc.  
1585 Broadway  
New York, New York 10036

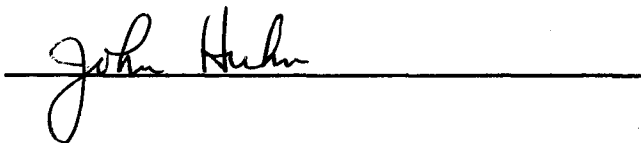
and by depositing same enclosed in a postpaid, properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

13th day of December, 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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RKO - STANLEY WARNER THEATERS, INC. :

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age, and that on the 13th day of December , 1978, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Robert S. Fink

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Robert S. Fink, Esq.  
Kostelanetz & Ritholz  
80 Pine Street  
New York, New York 10005

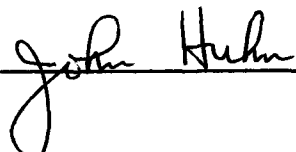
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

13th day of December , 1978

  
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STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

**December 13, 1978**

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**RKO - Stanley Warner Theaters, Inc.**  
**1585 Broadway**  
**New York, New York 10036**

**Gentlemen:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Michael Alexander**  
**Supervising Tax**  
**Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
RKO - STANLEY WARNER THEATERS, 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 ending August 31, 1972 to :  
November 30, 1975. :

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Applicant, RKO - Stanley Warner Theaters, Inc., 1585 Broadway, New York, New York 10036, 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 ending August 31, 1972 to November 30, 1975 (File No. 14715).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on November 16, 1977 at 1:15 P.M. Applicant appeared by Kostelanetz & Ritholz (Robert S. Fink, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether admissions to a theater to view a closed-circuit television broadcast of a live boxing match which originates outside New York State, is subject to the imposition of sales tax.

FINDINGS OF FACT

1. On March 11, 1976 pursuant to audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, RKO - Stanley Warner Theaters, Inc., for the periods ending August 31, 1972 to November 30, 1975 in the amount of \$43,770.00, plus penalty and interest of \$12,679.83, for a total due of \$56,449.83.

2. Applicant, RKO - Stanley Warner Theaters, Inc., was a corporation that operated a theater during the periods in issue and which used its facilities to project (on their screens) what was known as closed-circuit telecasts of live boxing matches held outside New York State. The transmittal was usually made directly to the theater over telephone wires. The main attractions of the showings were championship fights involving Muhammed Ali. On June 27, 1972, Ali fought Jerry Quarry (Quarry's brother fought Bob Foster in the preliminary). On November 21, 1972, Ali fought Foster, while on September 10, 1973, Ali fought Ken Norton. On March 26, 1974, Foreman fought Norton. On October 29, 1974, Ali fought George Foreman and on June 30, 1975, Ali fought Joe Bugner. On September 30, 1975, Ali fought Joe Frazier. Total receipts received for all the viewings are not in issue.

CONCLUSIONS OF LAW

A. That section 1105(f)(1) of the Tax Law provides, in part as follows:

"Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state, except charges for admission to race tracks, boxing, sparring, or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or motion picture theaters,...." Therefore, since applicant, RKO - Stanley Warner Theaters, Inc., presented a close-circuit telecast of a live sporting event held outside the state, it was not taxed under any other law of this state, and since the charge for admission was not for a motion picture, the admission charge was subject to the imposition of sales tax for the use of a place of amusement.

B. That the application of RKO - Stanley Warner Theaters, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 11, 1976 is sustained.

DATED: Albany, New York

December 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

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COMMISSIONER

  
COMMISSIONER