

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TONAWANDA PUBLISHING CORP.

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 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
June 1, 1969 through May 31, 1972 :

State of New York
County of Albany

John Huhn , 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 13th day of September , 1978, she served the within
Notice of Determination by ~~(certified)~~ mail upon Tonawanda Publishing
Corp. ~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Tonawanda Publishing Corp.
435 River Road
North Tonawanda, NY 14120

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)~~
~~XXXXXX~~ 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 September , 1978

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ or Period(s) :
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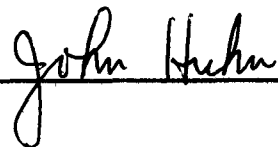
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of September , 1978, she served the within
Notice of Determination by ~~(certified)~~ mail upon Raichle, Banning,
Weiss and Halpern (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Raichle, Banning, Weiss & Halpern, Esqs.
10 Lafayette Square
Buffalo, NY 14203
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 September , 1978







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

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

September 13, 1978

Tonawanda Publishing Corp.
435 River Road
North Tonawanda, NY 14120

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
Michael Alexander
Supervising Tax Hearing
Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
TONAWANDA PUBLISHING 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 June 1, 1969 through May 31,	:	
1972.	:	

Applicant, Tonawanda Publishing Corp., 435 River Road, North Tonawanda, New York 14120, 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 June 1, 1969 through May 31, 1972 (File No. 01567).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on June 9, 1976 at 1:15 P.M. Applicant appeared by Raichle, Banning, Weiss and Halpern (Arnold Weiss Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUES

I. Whether "inserts" printed by applicant for customers and made a part of applicant's newspaper were subject to New York State sales tax.

II. Whether "inserts" printed for other newspapers and made a part of their papers were subject to New York State sales tax.

III. Whether "inserts" printed by applicant and delivered directly to its customers were subject to New York sales tax.

IV. Whether various items used in the printing of a newspaper and purchased by applicant were subject to New York State sales tax.

FINDINGS OF FACT

1. On December 19, 1973 as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Tonawanda Publishing Corp., in the amount of \$24,661.68, plus penalty and interest of \$8,672.88, for a total of \$33,334.56.

2. Applicant, Tonawanda Publishing Corp., publishes a newspaper called the Tonawanda News, in North Tonawanda, New York. It has been published since 1880.

3. During the period in issue, applicant, Tonawanda Publishing Corp., printed "inserts" on order from various commercial establishments. These were delivered as a supplement with applicant's newspaper. The inserts contained only pages of advertising material. They cited the name of the paper and the date. These supplements were an integral and component part of the newspaper. They contained no news. Some of the advertisers were W.T. Grant, K-Mart, Ames Department Store, Twin-Fair Banner Discount, and Gold Drug.

In addition, applicant delivered copies of these inserts to the store of the advertising customer, who then distributed them without charge to store customers as hand-outs. Applicant did not collect a sales tax on the printing of these advertising inserts.

4. During the period in issue, applicant, Tonawanda Publishing Corp., printed "inserts" for and delivered them to various other newspapers on the order of the advertiser. These inserts were then made a part of those various other papers. Applicant billed the advertising customers directly. The other newspapers included the Amherst Bee, Buffalo Evening News, the Niagara Falls Gazette, Buffalo Courier Express, Lockport Union Sun Journal, Grand Island Dispatch, Olean Times, Syracuse Herald, Rochester Democrat & Chronicle, Batavia Daily News, Medina Journal Register, Medina Pennysaver, Albion Pennysaver, and Albion Advertiser. Some of the advertisers were S.S. Kresge & Co., K-Mart, Atlantic Building Supply, Gold Drug, Great Atlantic & Pacific Tea Co., W.T. Grant, G.C. Murphy Co., and Twin-Fair Banner Discount. Applicant neither charged nor collected a sales tax on the printing of these advertising inserts.

5. During the period in issue, applicant, Tonawanda Publishing Corp., printed these "inserts" on an irregular basis. The advertisers switched from "ROP's" (run-of-the-papers) to inserts.

6. During the period in issue, applicant, Tonawanda Publishing Corp., in its printing endeavor purchased and used the following items upon which they did not pay a sales tax and which are in contention:

- | | |
|--------------------|---|
| a) misc. supplies | d) fountain solutions |
| b) perforator tape | e) news photos |
| c) ribbons | f) parts for trucks which
unloaded newsprint |

The auditor considered the misc. supplies, perforator tape, ribbons and fountain solution to be taxable at the New York State rate only. The news photos and parts for trucks which unloaded newsprint were held subject to both the state and local tax.

7. On January 26, 1978, applicant, Tonawanda Publishing Corp., and Deputy Commissioner and Counsel of the Department of Taxation and Finance, Peter Crotty, entered into a stipulation wherein it was agreed that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due against said applicant, Tonawanda Publishing Corp., in the amount of \$33,334.56 was rescinded and annulled. Also, that an amended determination be entered, finding that applicant was not liable for sales taxes for any newspaper advertising supplements inserted in newspapers from 1965 to date.

CONCLUSIONS OF LAW

A. That pursuant to the stipulation entered into between the parties on January 26, 1978 (Finding of Fact "7") applicant is not liable for sales tax for any newspaper advertising supplements inserted in newspapers from 1965 to date.

B. That during the period in issue, the sale of advertising inserts by applicant, Tonawanda Publishing Corp., to its customers for either handouts or home delivery is a sale of tangible personal property and is taxable within the meaning and intent of section 1105(a) and 1105(c)(2) of the Tax Law.

C. That the following items used by applicant, Tonawanda Publishing Corp., during the period in issue, are not machinery or equipment used directly and exclusively in the production of tangible personal property, i.e., a newspaper, but rather are supplies used in connection with such machinery, equipment, or apparatus. That their purchase is not exempt from the imposition of New York State sales tax within the meaning and intent of section 1115(a)(12) of the Tax Law:

- a) misc. supplies
- b) perforator tape
- c) ribbons
- d) fountain solutions

D. That the purchase and/or right to purchase the use of photographs and the purchase of parts for trucks which unloaded newsprint are purchases of tangible property subject to the imposition of New York State and local sales and use tax, according to the meaning and intent of sections 1105(a) and 1110 of the Tax Law.

E. That the application of Tonawanda Publishing Corp. is granted to the extent indicated in Conclusion of Law "A", above; 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 December 19, 1973, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER