

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

W-IRD, 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 & 29 of the
Tax Law for the ~~Year(s)~~ Period(s)
August 1, 1965 through May 31, 1972.

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 5th day of April, 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon W-IRD, Inc.

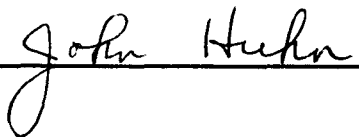
~~(certified)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
W-IRD, Inc.
Olympic Arena
P.O. Box 831
Lake Placid, New York 12946
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post 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 ~~(certified)~~
~~(certified)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(certified)~~ petitioner.

Sworn to before me this

5th day of April, 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

April 5, 1978

**W-IRD, Inc.
Olympic Arena
P.O. Box 831
Lake Placid, New York 12946**

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,

**Aloysius J. Mendza
Assistant Director**

cc: ~~Parties' Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
W-IRD, 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 August 1, 1965 through May 31, :
1972. :
:

Applicant, W-IRD, Inc., Olympic Arena (P.O. Box 831), Lake Placid, New York, 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 August 1, 1965 through May 31, 1972 (File No. 01936).

On April 1, 1974, the applicant waived a formal hearing before the State Tax Commission and consented to the issuance of a determination based upon the entire record contained in the file.

After due consideration of said record, the State Tax Commission renders the following determination.

ISSUE

Whether the rental of tapes containing pre-recorded radio programs is subject to tax at the total rental charge or at the material value of the unrecorded tape.

FINDINGS OF FACT

1. On December 26, 1972, as a 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 W-IRD, Inc., for \$507.12 in tax, plus penalty and interest, for

the period August 1, 1965 through May 31, 1972. On December 5, 1973, applicant submitted a check to the Sales Tax Bureau for the tax and interest determined to be due.

2. The applicant timely applied for a hearing to review said determination.

3. During the period at issue, applicant operated a radio station in Lake Placid, New York. The applicant rented tapes containing pre-recorded radio programs. The tapes were mailed from suppliers and, after airing, were usually returned to the suppliers.

4. On audit, the Sales Tax Bureau determined that the tapes were subject to tax at the total rental charge. The applicant contended that the tax due should be computed on the material value of the unrecorded tape, exclusive of the value of the program, since a tax on said program value would constitute a tax on talent.

5. The applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the tapes, including the radio programs thereon, constitute tangible personal property within the meaning and intent of section 1101(b)(6) of the Tax Law.

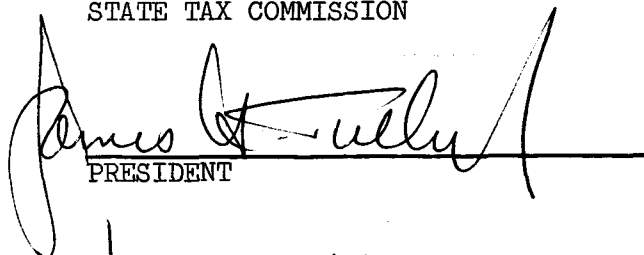
B. That inasmuch as section 1105(a) of the Tax Law imposes a tax upon the receipts from the retail sale of tangible personal property and the term "sale" is defined to include rentals, the Sales Tax Bureau properly imposed the tax upon the full rental charge.

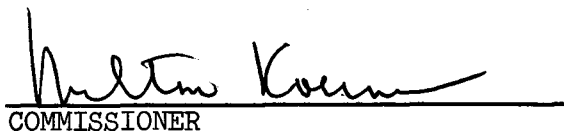
C. That the application of W-IRD, Inc. is granted to the extent that the interest, in excess of the minimum statutory interest, and penalty are cancelled;

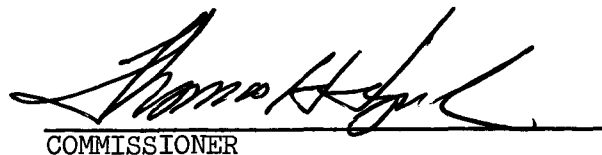
that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 26, 1972; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
April 5, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER