

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Buffalo Bill's Div. Highland Svc., Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 of the Tax Law
for the Period 3/1/72 - 2/28/75. :

State of New York
County of Albany

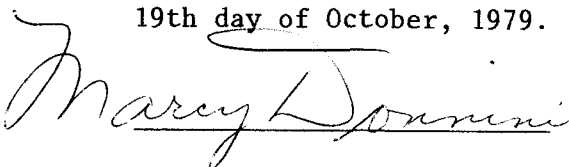
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Determination by mail upon Buffalo Bill's Div. Highland Svc., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

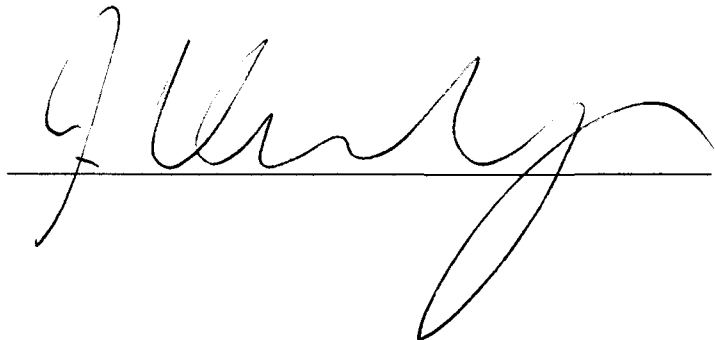
Buffalo Bill's Div. Highland Svc., Inc.
1 Bills Dr.
Orchard Park, NY 14127

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
19th day of October, 1979.


Mary Donrini



STATE OF NEW YORK
STATE TAX COMMISSION

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Jay Vredenburg, 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 19th day of October, 1979, he served the within notice of Determination by mail upon Ralph Halpern the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Ralph Halpern
Raichle, Banning, Weiss & Halpern
10 Lafayette Sq.
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
19th day of October, 1979.

Marcy J. Jousine

J. Vredenburg

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

October 19, 1979

Buffalo Bill's Div. Highland Svc., Inc.
1 Bills Dr.
Orchard Park, NY 14127

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Ralph Halpern
Raichle, Banning, Weiss & Halpern
10 Lafayette Sq.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
BUFFALO BILLS DIVISION	:	DETERMINATION
HIGHLAND SERVICE, INC.	:	
	:	
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 March 1, 1972 through	:	
February 28, 1975.	:	

Applicant, Buffalo Bills Division Highland Service, Inc., One Bills Drive, Orchard Park, New York 14127, 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 March 1, 1972 through February 28, 1975 (File No. 16539).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on March 8, 1977 at 9:15 A.M. Applicant appeared by Raichle, Banning, Weiss & Halpern (Ralph Halpern, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Arnold Glass, Esq., of counsel).

ISSUES

I. Whether the cleaning of Rich Stadium is exempt from sales tax as interior cleaning, under section 1105(c)(5) of the Tax Law.

II. Whether scouting reports furnished to applicant are taxable as an information service, under section 1105(c)(1) of the Tax Law.

FINDINGS OF FACT

1. On October 15, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant,

Buffalo Bills Division Highland Service, Inc. Said Notice assessed a tax deficiency of \$62,037.15, including penalty and interest. It was based on a field audit of applicant's records for the period March 1, 1972 through February 28, 1975.

As a result of a post-audit conference held by the Sales Tax Bureau, the aforementioned Notice was revised. A Notice of Assessment Review was sent to applicant on September 22, 1976, which showed an adjusted tax due of \$37,955.19, plus penalty and interest of \$13,208.60, less \$25,215.01 which had already been paid, for a revised amount due of \$25,948.78.

2. On November 20, 1976, applicant applied for a hearing to review the taxes assessed on the Notice of Assessment Review.

3. Applicant is a professional football team and a member of the National Football League. It leases and plays its "home games" in Rich Stadium, Orchard Park, New York. Rich Stadium is owned by Erie County and is made up of a stadium, perimeter area, parking area and practice field as follows:

- a. The Stadium - is an unroofed structure with tiers of seats for spectators, and encloses a field used exclusively for playing football.
- b. The Perimeter Area - consists of the grounds located immediately outside the walls of the stadium. This area has ticket booths and turnstiles which are covered by roofs. A perimeter fence runs between the ticket booths and turnstiles to prevent the entrance of unauthorized persons into the stadium.
- c. The Practice Field - is a fenced-in parcel of land south of the main stadium.

4. Applicant contracted with Service Systems for the cleaning of Rich Stadium before and after the football games that were played there in the 1973 and 1974 football seasons. Said agreement did not provide for the services of window cleaning, pest control or rodent control. Service Systems billed applicant on an hourly basis for the services which were performed by unskilled workers using brooms as their principal tool. Typically, the services were

billed as the cleaning of the stadium's interior; cleanup of area between perimeter fence and the stadium; cleanup of stands; washing and wiping seats; cleaning of grounds, booths and turnstiles; collect (but not remove) trash from stand and field; and practice-field pickup. Trash that Service Systems' employees picked up was carted away from the stadium by another contractor under a separate agreement with applicant.

5. Applicant contends that the services of Service Systems constituted interior cleaning services performed on a contractual basis for a period of more than thirty days and, therefore, were excluded from taxation.

6. Applicant entered into a scouting agreement with Blesto, Inc., which is quoted below and which states the following:

1. Blesto will perform the following services for the Bills and other Clubs engaging its services:

A. In the Spring of each year during the term of this agreement, Blesto will

(1) scout every college player considered by it to be a professional prospect,

(2) prepare and deliver a report on every such prospect, both seniors and underclassmen, to each Club,

(3) prepare

(a) a list of the top prospects in each scouting zone;

(b) a list of prospects by position, rated in order of their ability from each scouting zone; and

(c) a complete list of kicking and return specialists rated in order of their ability.

B. In the Spring of each year during the term of this Agreement, Blesto will hold a meeting with the representatives of each Club serviced by Blesto at a place and time selected by Blesto. During the meeting, all Blesto Scouts will be present to evaluate each senior prospect and to be interviewed by not more than three representatives from each Club.

- C. In the Fall of each year during the term of this Agreement, Blesto will scout every prospect seen in the Spring and prepare and deliver a report on every senior and underclassman prospect to each Club.
- D. In the Fall of each year during the term of this Agreement, Blesto will hold a meeting with representatives of each Club serviced by Blesto, at a place and time selected by Blesto. Blesto Scouts will be present to analyze in depth, re-evaluate and rate each professional football prospect according to position. Each Scout will be available for interview by no more than three representatives from each Club. A list of top prospective professional football players will be compiled at said meeting and submitted to each Club.
- E. All Blesto personnel will be present at a location selected by Blesto during the annual professional football draft for consultation with any and all Clubs serviced by Blesto.
- F. Blesto will provide each Club serviced by Blesto, with a complete computerized analysis of all the top college football players in the United States covered by Blesto Scouts during the year.

7. Applicant agreed to pay Blesto, Inc. \$200,000 in eight (8) quarterly installments of \$25,000 each. Thereafter, applicant agreed to pay 1/8 of the operating expenses and costs incurred by Blesto or a proportionate share of said costs, depending on the number of teams using Blesto.

8. Applicant contends that Blesto, Inc. is a joint venture made up of eight teams in the National Football League, that no sale is made by Blesto to its members, and that the eight quarterly installments of \$25,000 represented a purchase of interest in the joint venture. It also contended that the payments made by members were merely the reimbursement of operating costs, and that Blesto's reports were of a personal or individual nature.

9. The contract between Blesto and applicant makes no mention anywhere that applicant was, or was to be an owner or stockholder of Blesto, Inc.

10. The reports from Blesto were delivered simultaneously to applicant and seven other professional football teams, and each report was identical.

The reports were used in New York State by applicant, even though prepared and delivered outside New York State.

11. A difference exists between the calculations of applicant and the Sales Tax Bureau regarding how much was paid to Blesto during the audit period. Applicant's figures accurately portray the amounts paid to Blesto totaling \$184,817.74.

12. Applicant's actions were all taken in response to professional advice from attorneys and accountants.

CONCLUSIONS OF LAW

A. That the cleaning of Rich Stadium's perimeter area (excluding ticket booths and turnstiles) and practice field constitutes maintaining, servicing or repairing real property, and that the receipts therefrom are taxable in accordance with section 1105(c)(5) of the Tax Law.

B. That the cleaning of the stadium and of ticket booths and turnstiles in the perimeter area, constitutes interior cleaning and maintenance services performed on a regular contractual basis for a period of more than thirty days; accordingly, the services are excluded from the taxes imposed by section 1105(c)(5) of the Tax Law.

C. That the services performed by Blesto, Inc. of collecting, compiling and analyzing information on collegiate football players, and of furnishing reports thereon to eight National Football League teams comes within the purview of section 1105(c)(1) of the Tax Law.

D. That applicant and Blesto, Inc. are separate and distinct persons under the Tax Law. A taxable sale of non-personal information service took place between the parties in accordance with section 1105(c)(1) of the Tax Law (Sperry Rand Corp. v. Tully, Supreme Court, N. Y. County, N.Y.L.J., June 20, 1977, p. 6).

E. That the taxable payments made to Blesto, Inc. are found to be \$184,817.74, as stated in Finding of Fact "11".

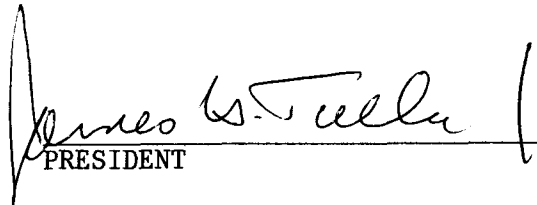
F. That interest in excess of the minimum statutory rate and penalty imposed pursuant to section 1145(a) of the Tax Law are hereby cancelled.

G. That the application of Buffalo Bills Division Highland Service, Inc. is granted to the extent indicated in Conclusions of Law "B", "E" and "F"; that the Sales Tax Bureau is hereby directed to modify the Notice of Assessment Review issued on September 22, 1976; and that, except as so granted, the application is in all other respects denied.


DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER