

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

AUBURN PUBLISHING CO., INC. ^{of} d/b/a CITIZEN ADVERTISER,
and LITHGOW OSBORNE, FREDERICK R. L. OSBORNE and
SAMUEL B. KENNEDY, III, Individually and as Officers

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 ~~YEARS XXXX~~ Period (S) :
December 1, 1969 through August 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 6th day of April , 1979 , ~~He~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Auburn Publishing Co., Inc.
d/b/a Citizen Advertiser, and
Lithgow Osborne, Frederick R.L.

Osborne and Samuel V.
Kennedy, III, Individually, ~~(representative of)~~ the petitioner in the within proceeding,
and as Officers

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Auburn Publishing Co., Inc.
d/b/a Citizen Advertiser, and
Lithgow Osborne, Frederick R. L. Osborne and
Samuel B. Kennedy, III, Individually and as Officers
34 Dill St.
Auburn, 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.

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

6th day of April , 19 79

Marilyn J. Paffear

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
AUBURN PUBLISHING CO., INC. d/b/a CITIZEN ADVERTISER,
and LITHGOW OSBORNE, FREDERICK R. L. OSBORNE and
SAMUEL B. KENNEDY, III, Individually and as Officers

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) XXX~~ Period ~~(s) XXX~~ :
December 1, 1969 through August 31, 1972.

State of New York
County of Albany

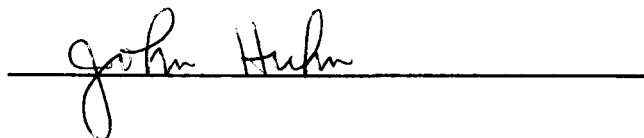
John Huhn , being duly sworn, deposes and says that
~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of April , 1979, ~~He~~ served the within
Notice of Determination by ~~(represented)~~ mail upon Hancock, Estabrook, Ryan,
Shove & Hurst, Esqs.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Hancock, Estabrook, Ryan, Shove & Hurst, Esqs.
One Mony Plaza
Syracuse, New York 13202
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

6th day of April , 1979.







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

April 6, 1979

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

Auburn Publishing Co., Inc.
d/b/a Citizen Advertiser, and
Lithgow Osborne, Frederick R. L. Osborne and
Samuel B. Kennedy, III, Individually and as Officers
34 Dill St.
Auburn, New York


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

In the Matter of the Application :
of :
AUBURN PUBLISHING CO., INC. d/b/a :
CITIZEN ADVERTISER, and LITHGOW OSBORNE, :
FREDERICK R. L. OSBORNE and SAMUEL V. : DETERMINATION
KENNEDY, III, Individually and as :
Officers :
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 December 1, :
1969 through August 31, 1972. :
:

Applicants, Auburn Publishing Co., Inc. d/b/a Citizen
Advertiser, and Lithgow Osborne, Frederick R. L. Osborne and
Samuel V. Kennedy, III, individually and as Officers, 34 Dill
Street, Auburn, 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 December 1,
1969 through August 31, 1972 (File No. 01607).

A formal hearing was held before Julius E. Braun, Hearing
Officer, at the offices of the State Tax Commission, Building
#9, State Campus, Albany, New York, on August 18, 1976 at
9:15 A.M. Applicants appeared by Hancock, Estabrook, Ryan,
Shove and Hust (Joseph H. Murphy, Esq., of counsel). The Sales

Tax Bureau appeared by Peter Crotty, Esq. (Solomon Sies, Esq., of counsel).

ISSUE

Whether various items used in the printing of a newspaper were subject to New York state and local sales tax.

FINDINGS OF FACT

1. On January 19, 1973 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Auburn Publishing Co., Inc. d/b/a Citizen Advertiser, and Lithgow Osborne, Frederick R. L. Osborne and Samuel V. Kennedy, III, individually and as officers, in the amount of \$5,216.32, plus penalty and interest of \$1,171.97, for a total of \$6,388.29. A payment of \$5,814.72 was made and received on May 16, 1973.

2. Applicant, Auburn Publishing Co., Inc. d/b/a Citizen Advertiser, uses the following items in contention in its publishing endeavor:

Exhibit E - Schedule IV-A

a. Perforated paper tape - which is used to equip and activate a photocomposing device, which sets the type for the production of the newspaper. It is a supply used in connection with exempt machinery.

b. Developer - a chemical solution which washes over unexposed film to produce the image that can be imprinted on the press plate. It is a supply used in connection with exempt machinery.

c. Activator - a chemical solution, used to harden and stabilize the negatives. It is a supply used in connection with exempt machinery.

d. Negatives - for advertisements which are various color-separation negatives, giving full color photographs that can then be imprinted on the press-plate. Each color requires its own press-plate, which then picks up its own color ink. It is a supply used in connection with exempt machinery.

e. Border tapes which are cellophane tapes - of various designs and sizes which are placed around advertisements for emphasis. It is a supply used in connection with exempt machinery.

f. Contact screen - which is a screen with vertical and horizontal lines which will produce screen prints suitable for reproduction (represented as 20% of purchases of \$1,077.07).

Exhibit E - Schedule IV-B

g. Cartoons purchased from various suppliers:

1. Goorin Brothers, Inc. - "Happy Days"
2. Los Angeles Times Syn. - "Oliphant"
3. McNaught Syn. - "Mickey Finn"
4. Hall Syndicate - "A. Capp & other cartoons"
5. Register & Tribune - "Citizen Smith"
6. Martin Stanton - cartoonist (local).

h. Feature columns purchased:

1. North American Alliance - columnist Jack Anderson
2. Washington Star - special feature.

i. Photo-fax paper - a chemically treated paper used to pick up impulses received over telephone lines from remote sources.

j. Books - designer guides by George Day ordered through the paper by its readers.

k. Books - by INPA, ordered through the paper by its readers.

l. Books - law looseleaf type, ordered through the paper by its readers.

Exhibit E - Schedule III-B

m. IBM selectric typewriter - used by reporters, has a regular keyboard plus additional symbols and input codes, and was not used exclusively in production.

n. IBM selectric typewriter - used by the advertisement staff, has a regular keyboard plus additional symbols and input codes, and was not used exclusively in production.

Exhibit E - Schedule VIII

- o. Chemco Activator - same as c, supra.
- p. Chemco Developer - same as b, supra.
- q. Photo supplies - i.e., films and chemicals necessary to process film into actual photographs. They are supplies used in connection with exempt machinery.
- r. Photographs - use of photographs taken by local photographers. They are neither purchased for resale, nor are they supplies.

CONCLUSIONS OF LAW

A. That the following items used by applicant are not machinery or equipment used directly and exclusively in the production of tangible personal property (i.e., newspapers), but are supplies used in connection with such machinery, equipment or apparatus, and are 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. perforated paper
- b. developer
- c. negatives for advertisements
- d. activator
- e. border tapes
- f. chemco activator
- g. chemco developer
- h. photo supplies
- i. photo-fax paper

B. That there was a proper allocation as to the items listed above (Conclusion of Law "A") and only State tax was charged. They are not exempt from the imposition of sales tax pursuant to the following sections of the Tax Law:

1105(a)
1101(b)(4)(i)(A)
1118(4)
1115(b)1
1105(c)(1)

C. That contact screen used by applicant is equipment used directly and exclusively in the production of the newspaper; therefore, its purchase is exempt from the imposition of New York State sales tax, within the meaning and intent of section 1115(a)(12) of the Tax Law.

D. That the feature columns purchased by applicant, (which include Jack Anderson from the North American Alliance and special features from the Washington Star) are information services used in the collection and dissemination of news, and as such are exempt from the imposition of sales tax within the meaning and intent of section 1105(c)(1) of the Tax Law. However, cartoons are not such information services used in the collection and dissemination of news within the meaning and intent of section 1105(c)(1) of the Tax Law.

E. That the books ordered by applicant's readers through applicant's newspaper are not a sale within the meaning and intent of section 1101(b)(5) of the Tax Law.

F. That the two IBM typewriters used by applicant have regular keyboards with additional symbols and input codes; therefore, they were not used directly and exclusively in the production of the newspaper so as to qualify within the exemption as provided by section 1115(a)(12) of the Tax Law.

G. That the purchase of the use of photographs by applicant from free-lance photographers is a purchase of tangible personal property subject to tax according to the meaning and intent of section 1105(a) of the Tax Law. It is not a purchase of an informational news service within the meaning and intent of section 1105(c)(1) of the Tax Law.

H. That the application of Auburn Publishing Co., Inc. d/b/a Citizen Adviser, and Lithgow Osborne, Frederick R. L. Osborne and Samuel V. Kennedy, III, individually and as officers, is granted to the extent that the assessment of sales tax on the purchase of the contact screens, feature columns and books is 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 January 19, 1973 and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER