

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Auburn Credit Bureau 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 & 29 of the Tax Law
for the Period 6/1/72-5/31/75. :

State of New York
County of Albany

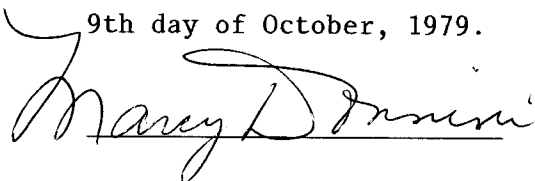
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Raymond G. Hamlin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

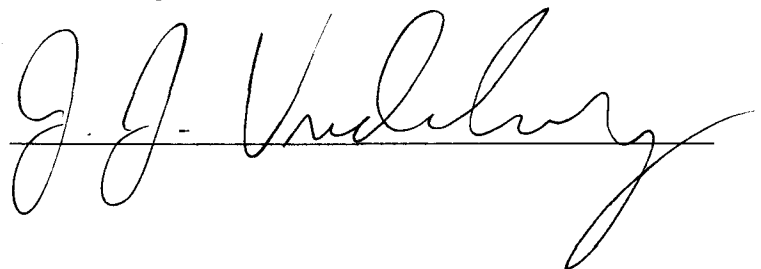
CPA Raymond G. Hamlin
McGrath & Co.
790 One Lincoln Ctr.
Syracuse, NY 13202

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
9th day of October, 1979.


Nancy D. Dominici


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Auburn Credit Bureau Inc. :

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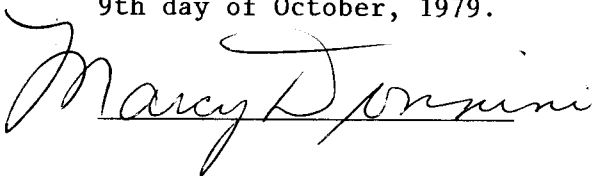
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Determination by mail upon Auburn Credit Bureau Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

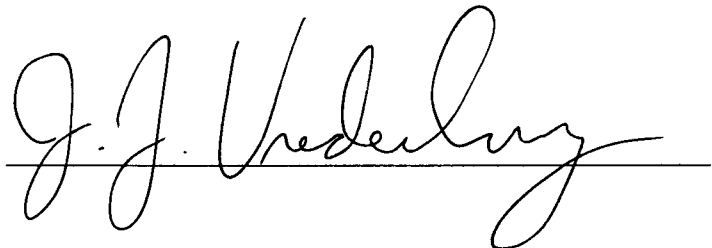
Auburn Credit Bureau Inc.
46 South St.
Auburn, NY 13022

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
9th day of October, 1979.


Nancy D. Dominini


J. J. Vredenburg

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

October 9, 1979

Auburn Credit Bureau Inc.
46 South St.
Auburn, NY 13022

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

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative
Raymond G. Hamlin
McGrath & Co.
790 One Lincoln Ctr.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
AUBURN CREDIT BUREAU, 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 June 1, 1972 through May 31,	:	
1975.	:	

Applicant, Auburn Credit Bureau, Inc., 46 South Street, Auburn, New York 13022, 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, 1972 through May 31, 1975 (File Nos. 14418 and 14431).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on July 28, 1977 at 10:45 A.M. Applicant appeared by Raymond Hamlin, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUES

I. Whether annual membership fees paid to applicant for credit information services are subject to sales tax.

II. Whether minimum monthly charges paid to applicant for credit information reports furnished by applicant are subject to sales tax.

III. Whether charges for oral credit information reports furnished by applicant are subject to sales tax.

FINDINGS OF FACT

1. On January 19, 1976 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 applicant, Auburn Credit Bureau, Inc., for the period October 1, 1974 through May 31, 1975 in the amount of \$938.32, plus penalty and interest of \$230.72, for a total of \$1,169.04.

On January 22, 1976, the Sales Tax Bureau issued a second Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for the period June 1, 1972 through September 30, 1974 in the amount of \$3,855.47, plus penalty and interest of \$1,628.24, for a total of \$5,483.71.

Separate notices were issued because of a change in corporate ownership effective October 1, 1974.

2. Applicant is a credit information bureau that provides written and oral credit information to its subscribers. The oral information was generally given by telephone. Applicant also offers a weekly bulletin service which furnishes information regarding deeds, mortgages, judgments, etc., filed in the Cayuga County Clerk's office.

3. For the period June 1, 1972 through July 31, 1974, applicant entered into membership service contracts. Said contracts provided for the subscriber's payment of an annual membership fee, in addition to a fee for the particular type of service desired. The additional fee paid by members for the oral or written credit information reports was lower than the fee that applicant charged non-members for the same reports.

4. On August 1, 1974, applicant began charging member subscribers a minimum monthly charge. This charge, which replaced the annual membership

fee, entitled member subscribers to a limited number of free reports of either an oral or written nature. Additional oral or written reports were available at rates lower than those charged to non-members.

5. On audit, the Sales Tax Bureau held that applicant was liable for tax because it failed to collect sales tax on its annual membership fee, the subsequent minimum monthly charge and charge for oral reports furnished to member subscribers.

The Sales Tax Bureau did not assert any additional sales tax with respect to sales made to other credit bureaus, exempt organizations, or out-of-state members and non-members.

6. Applicant collected sales tax on written credit information reports and on the weekly bulletin service.

7. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the annual membership fees effective during the period June 1, 1972 through July 31, 1974 were taxable under section 1105(c)(1) of the Tax Law, except where a subscriber elected to receive only oral reports.

B. That the minimum monthly charges effective on and after August 1, 1974 were taxable within the meaning and intent of section 1105(c)(1) of the Tax Law.

C. That the charges for oral credit information services were not subject to sales tax.

D. That penalty and interest in excess of the minimum statutory rate are cancelled.

E. That the application of Auburn Credit Bureau, Inc. is granted to the extent indicated in Conclusions of Law "A", "C" and "D"; that the Sales Tax Bureau is hereby directed to modify the notices of determination and demand

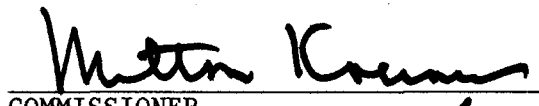
for payment of sales and use taxes due issued on January 19, 1976 and January 22, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION


PRESIDENT

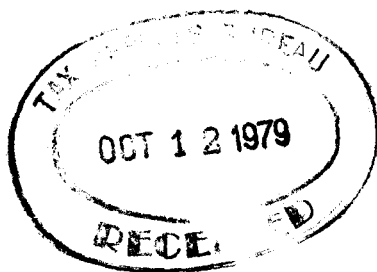

COMMISSIONER


COMMISSIONER

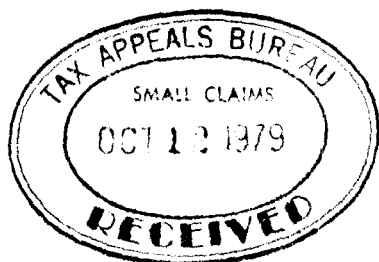
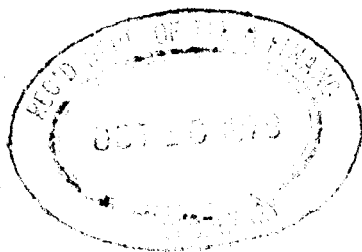
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STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Small Claims.



Raymond G. Hamlin
McGrath & Co.
790 One Lincoln Ctr.
Syracuse, NY 13202



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

October 9, 1979

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46 South St.
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790 One Lincoln Ctr.
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STATE OF NEW YORK

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DATED: Albany, New York

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