

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BARONET LITHOGRAPH CO.

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) :
December 1, 1968 through February 29, 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 25th day of August , 1978 , ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon Baronet Lithograph Co.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Baronet Lithograph Co.
c/o Grow Chemical Corp.
345 Park Avenue
New York, New York 10022
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

25th day of August , 19 78

[Signature]

John Huhn



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

August 25, 1978

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

Baronet Lithograph Co.
c/o Grow Chemical Corp.
345 Park Avenue
New York, New York 10022

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. Nendza
Assistant Director

cc: ~~Baronet Lithograph Co.~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
BARONET LITHOGRAPH CO.	:	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 December 1, 1968 through	:	
February 29, 1972.	:	

Applicant, Baronet Lithograph Co. c/o Grow Chemical Corp., 345 Park Avenue, New York, New York 10022, 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, 1968 through February 29, 1972 (File No. 10034).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on July 20, 1977 at 9:15 A.M. Applicant appeared by Stephen Young, Controller, and by Sanford Konstadt, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether applicant's purchases of materials such as art work, layouts and compositions were purchases of taxable production supplies or whether they were tax exempt purchases for resale to customers.

FINDINGS OF FACT

1. The Sales Tax Bureau conducted a field audit of the books and records of applicant, Baronet Lithograph Co. The examiner took a one-year test audit in the area of general recurring-type purchases and arrived at an error rate, which it

applied to the audit period. As a result, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant on June 8, 1972 for taxes due of \$11,160.34, plus \$2,635.33 in penalty and interest, for a total due of \$13,795.67 for the period December 1, 1968 through February 29, 1972.

2. Applicant agreed to the time period used, the mathematical accuracy and the propriety of the audit procedure. Applicant contended, however, that the error rate was distorted by the Sales Tax Bureau's inclusion in taxable purchases of certain purchases which were actually purchases for resale and, therefore, exempt from sales and use tax.

3. Applicant was a printing and lithographing company. It had no facilities to produce art work, layouts, mechanicals, overlays, color separations and compositions. Its customers sometimes purchased these materials and services themselves, but applicant was usually required to furnish these items for its customers as part of the transaction. During the audit test period, \$92,255.00 of the additional taxable purchases totaling \$106,664.00 were for these materials and services.

4. Applicant's function was to print the material contracted for under the direction of its customer. It used the art work, layouts, color separations, overlays, mechanicals and compositions in production of the finished product. The art work, layouts, color separations, overlays, mechanicals and compositions were approved at all stages by the customer and, after use by the applicant, became the customer's property whether or not the job was completed. Applicant listed these materials and services separately on the bill and added the appropriate sales tax to the total. The customer paid the sales tax which applicant then remitted to the Sales Tax Bureau.

5. Applicant furnished executed resale certificates to the suppliers of the services and materials at issue.

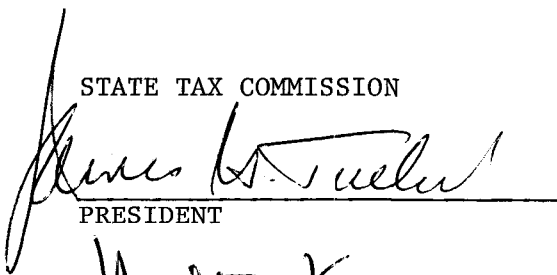
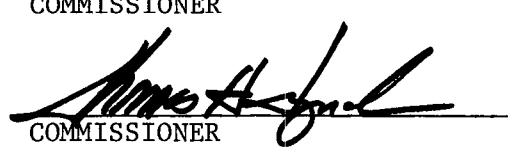
CONCLUSIONS OF LAW

A. That the purchases of art work, layouts, color separations, overlays, mechanicals and compositions by applicant, Baronet Lithograph Co., although transferred to its customers, were purchases of supplies and services for use by applicant in its production process; therefore, they were not purchases for resale exempt from sales and use tax in accordance with the meaning and intent of section 1101(b) (4) of the Tax Law.

B. That the application of Baronet Lithograph Co. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 8, 1972 is sustained.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER