

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALLEN ARTHUR CO., INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use Taxes :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXXX~~ Period(s) :  
3/1/72 - 2/28/75.

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 October , 1978 , he served the within  
Notice of Determination by ~~XXXXXXX~~ mail upon Allen Arthur Co., Inc.

~~XXXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Allen Arthur Co., Inc.  
7204 West 27th Street  
Minneapolis, Minnesota 55426

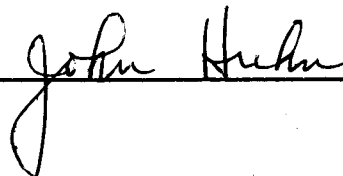
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXXX~~ petitioner.

Sworn to before me this

6th day of October , 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

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ALLEN ARTHUR CO., INC.

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For a Redetermination of a Deficiency or :  
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of Sales & Use Taxes :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXX~~ or Period(s) :  
3/1/72 - 2/28/75.

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 October , 19 78, he served the within  
Notice of Determination by ~~XXXXXXXXXX~~ mail upon Peter A. Rocchio

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Peter A. Rocchio  
18 East 41st Street  
New York, New York 10017

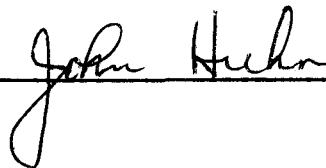
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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 October , 19 78

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

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

October 6, 1978

**Allen Arthur Co., Inc.**  
**7204 West 27th Street**  
**Minneapolis, Minnesota 55426**

**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) **1139 & 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 **6 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

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In the Matter of the Application	:	
of	:	
ALLEN ARTHUR CO., 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 March 1, 1972 through February 28,	:	
1975.	:	

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Applicant, Allen Arthur Co., Inc., 7204 West 27th Street, Minneapolis, Minnesota 55426, 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. 11140).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on September 8, 1977. Applicant appeared by Peter A. Rocchio, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether applicant's activities in the fitting and "fusion" of a hairpiece (incorporating customer's hair) constitutes "installing tangible personal property" within the intent and meaning of section 1105(c)(3) of the Tax Law.

II. Whether applicant's activities involving the styling of the customer's hair with an incorporated hairpiece constitute "maintaining, servicing or repairing tangible personal property" within the meaning of section 1105(c)(3) of the Tax Law.

FINDINGS OF FACT

1. On June 5, 1975, applicant, Allen Arthur Co., Inc., executed a consent extending the period of limitation for assessment of sales and use taxes for the taxable periods March 1, 1972 through May 31, 1975 to September 20, 1975. On August 21, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Allen Arthur Co., Inc. and Arthur Lazere, Alfred Schwab, Jr., and Thomas Jablonski, individually and as officers, for the period March 1, 1972 through February 28, 1975. It was based on additional taxable sales disclosed on audit in the amount of \$11,438.36, plus penalty and interest of \$3,764.49, for a total due of \$15,202.85. Applicant filed a timely application for a hearing to review the aforementioned determination.

2. Applicant, Allen Arthur Co., Inc., operates a chain of studios which sells and services men's hairpieces. Applicant maintains a location at 18 East 41st Street, New York, New York. The business consists of the sale of hairpieces, the fitting, fusion and re-fusion of hairpieces under a patent process, as well as the styling and cutting of hair.

3. A customer is fitted for a hairpiece and a mold is made showing the size of the head and the direction of hair. The mold is sent to Koera where the hairpiece is made from synthetics and then returned to the home office in Minnesota for distribution to the appropriate studio. The fusion process involved knotting the hair, applying adhesive and sewing the knotted hair to the hairpiece. After a period of six to eight weeks, a re-fusion takes place, whereby the hairpiece is removed, shampooed and re-attached. The customer's own hair is also shampooed and cut. The headpiece is semi-permanently attached by way of a patented process. The customer thereafter may periodically have his own hair styled so that it blends with the hairpiece.

4. Applicant collected and remitted sales tax on the retail sale of the hairpiece only.

5. The customer entered into a sales agreement which itemized the cost of the hairpiece, the time fusion cost and the styling.

6. Applicant contends that it was required to obtain a barbershop owner's license and hire a licensed barber in connection with the styling and cutting of a customer's hair. It is contended that the styling constitutes barbering and is, therefore, exempt from sales tax for the period in issue. It is also contended that the affixation of the hairpiece should be treated as a prosthetic aid or artificial device to correct or alleviate physical incapacity in human beings.

7. The additional tax on audit did not include hair cutting or barbering services which do not involve a hairpiece.

CONCLUSIONS OF LAW

A. That the activities of applicant, in which a hairpiece, sold to the customer or supplied by the customer, is incorporated into the customer's natural hair, constitutes the installing of tangible personal property within the intent and meaning of section 1105(c)(3) of the Tax Law.

B. That applicant was required to collect the tax and is liable therefor with respect to the activities set forth in Conclusion of Law "A", supra.

C. That the activities of applicant with respect to the styling of the customer's hair with the hairpiece in place, constitutes the maintaining or servicing of tangible personal property within the intent and meaning of section 1105(c)(3) of the Tax Law.

D. That applicant was required to collect tax and liable therefor with respect to the activities set forth in Conclusion of Law "C", supra.

E. That the application of Allen Arthur Co., Inc. is hereby denied.

DATED: Albany, New York  
October 6, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER