

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Montgomery Ward & Co. 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 9/1/71-5/31/75. :

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 28th day of September, 1979, he served the within notice of Determination by mail upon Montgomery Ward & Co. Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Montgomery Ward & Co. Inc.

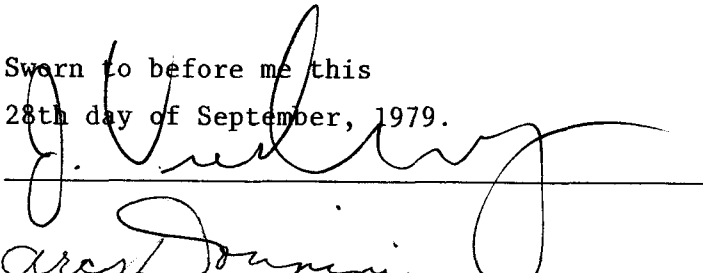
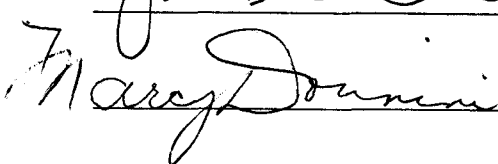
P.O. Box 1235

Baltimore, MD 21203

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
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Montgomery Ward & Co. Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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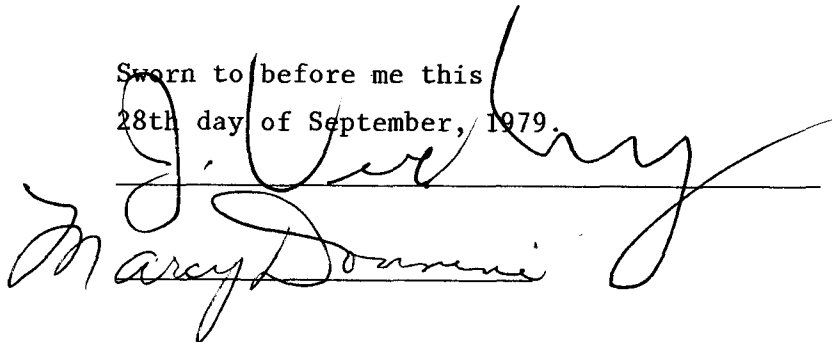
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Jerome J. Lutz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Jerome J. Lutz
c/o Montgomery Ward
One Montgomery Ward Plaza
Chicago, IL 60671

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
28th day of September, 1979.


Mary Donneni



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Montgomery Ward & Co. Inc.
P.O. Box 1235
Baltimore, MD 21203

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,

A handwritten signature in cursive script, appearing to read "Robert H. Tully".

cc: Petitioner's Representative
Jerome J. Lutz
c/o Montgomery Ward
One Montgomery Ward Plaza
Chicago, IL 60671
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MONTGOMERY WARD & 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 Periods September 1,	:	
1971 to May 31, 1975.	:	

Applicant, Montgomery Ward & Co., Inc., P.O. Box 1235, Baltimore, Maryland 21203, 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 periods September 1, 1971 to May 31, 1975 (File No. 11659).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 27, 1977 at 1:15 P.M. Applicant appeared by Jerome J. Lutz, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel).

ISSUE

Whether applicant is liable for use tax under Articles 28 and 29 of the Tax Law, for catalogs which it ships to New York State addressees (to whom no charge is made) where:

(1) Said catalogs are placed in the U.S. mails outside New York State and delivered to the designated addressees by the U.S. Postal Service.

or

(2) Said catalogs are placed with a common carrier outside New York State, which common carrier then delivers said catalogs to the U.S. mails, both inside and outside the State, with the U.S. Postal Service completing delivery to the New York State addressee.

FINDINGS OF FACT

1. On November 18, 1975 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, Montgomery Ward & Co., Inc., for \$297,727.51, plus penalty and interest of \$107,023.49, for a total of \$404,751.00. This was done on the grounds that use tax was due on catalogs mailed to customers in New York State.

2. Applicant is an Illinois corporation authorized to do business in New York State, and is engaged in business there as a vendor of consumer products. This is done through retail and catalog sales outlets, and by direct mail. Each year, it publishes several issues of sales catalogs. These are prepared for applicant by an independent printer located outside New York State. Catalogs destined for New York reach it by either a direct-mailing or a freight-mailing method.

Under the direct-mailing method, the printer affixes a mailing label furnished by petitioner to each catalog, designating the name and address of the intended recipient. The printer then places these catalogs in the U.S. mails in Chicago, Illinois, from which point delivery is made to the addressee by either Third Class or Fourth Class Mail.

Under the freight-mailing method, individually wrapped and addressed catalogs are imprinted with petitioner's postal permit, and then placed in mail sacks destined for a post office distribution center.

The printer then delivers these mail sacks to common carriers for shipment to such distribution centers under non-negotiable bills of lading, which bills show the distribution center's postmaster as consignee.

On delivery of these consigned mail sacks to the center, U.S. Postal Service employees distribute the sacks to the proper post office, from which the individual catalogs are delivered to the addressee, again by either Third or Fourth Class Mail. Applicant did not charge its New York customers for catalogs shipped to them by direct-mail and freight-mail methods.

CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law provides, in part:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one, except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail...

B. That section 1101(b)(7) defines "use" as follows:

The exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of such property.

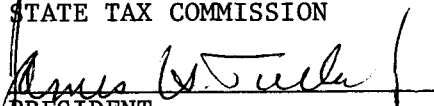
C. That the mailing or shipping of tangible personal property (in the nature of catalogs) into New York State and directly to its customers, is exempt from the imposition of a use tax, pursuant to sections 1110 and 1101(b)(7) of the Tax Law. (Matter of the Application of Ford Motor Company, State Tax Commission, September 15, 1976, Bennett Brothers, Inc. vs. State Tax Commission, 62 AD2d 614.)

D. That the application of Montgomery Ward & Co., Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 18, 1975 is cancelled.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER