

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
New York Life Insurance Co. :

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 Year 1975. :

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 19th day of October, 1979, he served the within notice of Determination by mail upon New York Life Insurance Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

New York Life Insurance Co.
51 Madison Ave.
New York, NY 10010

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
19th day of October, 1979.

Mary Dominie

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

New York Life Insurance Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

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Sales & Use Tax :

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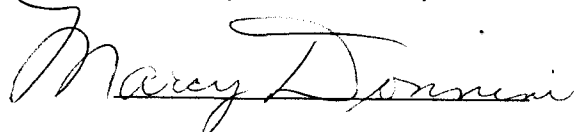
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Determination by mail upon Thomas L. Stapleton the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

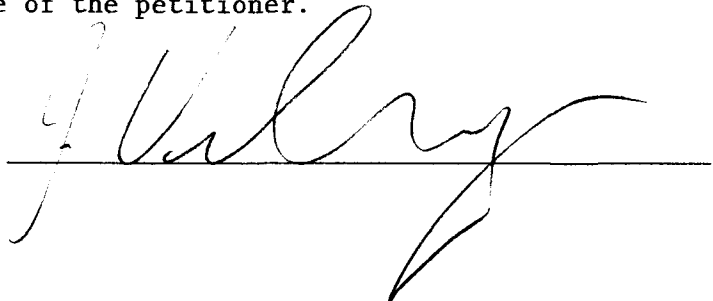
Mr. Thomas L. Stapleton
and Gerald E. Singleton
1 Madison Ave.
New York, NY 10010

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
19th day of October, 1979.


Nancy Donnan


Jay Vredenburg

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

October 19, 1979

New York Life Insurance Co.
51 Madison Ave.
New York, NY 10010

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, 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 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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Thomas L. Stapleton
and Gerald E. Singleton
1 Madison Ave.
New York, NY 10010
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
METROPOLITAN LIFE INSURANCE COMPANY :
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, 1971 to :
November 30, 1974. :

DETERMINATION

In the Matter of the Application :
of :
NEW YORK LIFE INSURANCE COMPANY :
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 to February 2, :
1975. :

Applicants, Metropolitan Life Insurance Company and New York Life Insurance Company, One Madison Avenue and 51 Madison Avenue, New York, New York 10010, respectively, filed applications 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 December 1, 1971 to November 20, 1974 and March 1, 1972 to February 2, 1975, respectively (File Nos. 00558 and 10478).

A consolidated formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 17, 1977 at 9:15 A.M. Applicants appeared by Thomas L. Stapleton, Esq. and Gerald E. Singleton, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the written reports furnished applicants by Retail Credit Co. and Hooper-Holmes Bureau, Inc. constitute the furnishing of an information service pursuant to section 1105(c)(1) of the Tax Law, subject to the imposition of a sales or compensating use tax under sections 1105(c)(1) and 1110 thereof.

II. Whether medical impairment information furnished to applicants by an unincorporated, non-profit trade association of which applicants were members, constitutes the furnishing of an information service pursuant to section 1105(c)(1) of the Tax Law, subject to the imposition of sales and compensating use tax.

III. Whether a refund claim for the period herein involved of one applicant could be consolidated with the instant hearing.

IV. Whether the penalties and interest above the minimum interest imposed should be waived.

FINDINGS OF FACT

1. On June 13, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant Metropolitan Life Insurance Company (Metropolitan Life) for \$101,824.85, plus interest and penalties of \$30,660.91, for a total of \$132,485.76. The underlying audit included tax on expense purchases, investigative reports and medical impairment information.

2. On October 31, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant New York Life Insurance Company (New York Life) for \$96,427.07, plus interest and penalties of \$34,472.67, for a total of \$130,899.74. The Notice further provided that a separate assessment was being issued for the portion of the audit which was agreed to, thereby limiting the tax asserted to investigative reports received from Hooper-Holmes Bureau, Inc. (Hooper-Holmes) and Retail Credit Co. (Retail Credit). However, the hearing officer consolidated refund claims made for the agreed sales and use taxes paid by New York Life. No refund claims were offered in evidence, nor were any denials thereof proffered.

3. Throughout the periods involved, applicants, Metropolitan Life Insurance Company and New York Life Insurance Company, purchased written reports predominantly involving life and health underwriting investigations. The investigations which were conducted and the reports which were prepared were done by Hooper-Holmes and by Retail Credit.

4. Each applicant provided specifications to Hooper-Holmes and to Retail Credit concerning the types of information each required. The details of the specifications varied somewhat with the differing needs of each life insurance company.

5. The investigations (and the reports based thereon) involved areas bearing on the insurability of an individual, including health, employment, habits, living conditions and reputation.

6. During the course of an investigation, Hooper-Holmes's practice was to contact (among others) the individual applying for insurance and lay and medical sources, for the purpose of developing specified information relevant to insurability. Retail Credit had a similar practice which always required two sources, including the person applying for insurance. Contact was not by telephone or mail, but rather by face-to-face interviews within the community.

7. Hooper-Holmes and Retail Credit were licensed private investigators within New York State, as were all of their field investigators.

8. Applicants paid from \$5.00 to \$75.00 per report, depending on the depth of information required. Applicants pay no annual retainer fee to either Hooper-Holmes or Retail Credit. A typical investigation for an \$11.50 report might have required from twenty minutes to an hour in interviewing time alone.

9. Applicants had a confidentiality agreement with Hooper-Holmes during the periods at issue, and they could not disclose the information

received in the reports to anyone not required to make a decision concerning an individual's insurability.

10. During the periods involved, applicants could share information received from Retail Credit with other subscribing life insurance companies.

11. Hooper-Holmes and Retail Credit kept the results of past investigations on file in the periods at issue. Highly desirable "protective" information bearing on an individual's insurability was kept on file for three years. Less desirable information was kept on file for one year. At the end of these periods, the filed information was destroyed in the regular course of business.

12. During the periods involved, Hooper-Holmes and Retail Credit reviewed their files for leads derived from previous investigations on a particular individual, before commencing a new investigation.

13. For the periods at issue, applicants were two of the 712 members of the Medical Information Bureau (MIB), an unincorporated, non-profit trade association consisting only of life insurance companies as defined in the United States Internal Revenue Code.

14. As members of MIB, applicants contributed significant underwriting information in the form of medical impairment data to MIB, whose only source of such information was that contributed by its members.

15. MIB owned the data contributed to it in common with the contributing members and it was for the exclusive use of the members.

16. Had applicants, as members of MIB, chosen to discontinue MIB membership during the periods involved, they would have been required (pursuant to their MIB membership agreements) to dispose of information acquired from MIB, as directed by the MIB Executive Committee.

17. The Recording and Statistical Division of Sperry Rand ("Sperry Rand") acted as service agent for MIB throughout the periods involved. The information contained in MIB files was assembled, processed, and transmitted to members by Sperry Rand, which retained possession of the information without any property right therein.

18. Information was mailed in typewritten form by MIB members to Sperry Rand, which then placed it in MIB's computer banks.

19. Sperry Rand received requests for information from members through MIB's computer terminals. Approximately 15% of the requests resulted in the production of information, which was then sent to members in the form of electronic readouts on the members' computer terminals located on the members' premises.

20. Upon request, MIB was required to provide all members with all impairment data in its possession.

21. As a requisite of membership in MIB, applicants paid MIB a two-fold charge: (1) the "basic charge", covering MIB operating costs (including salaries), which was collected by an annual assessment on all members and which was based on the amount of ordinary life insurance in force and on ordinary life insurance issued during a calendar year;

(2) the "checking service charge", which was based on the number of inquiries made by each member each month, including a minimum charge. This minimum charge was assessed on all MIB members, regardless of whether any information inquiries had been made. All bills for charges were sent by Sperry Rand to the members of MIB.

22. Applicants in good faith believed that all of the above-described transactions with Hooper-Holmes, Retail Credit and MIB were not taxable. The legal issues herein involved are complex.

CONCLUSIONS OF LAW

A. That the written reports received by applicants from Retail Credit during the periods at issue contained information which could be shared with other subscribers of Retail Credit; therefore, such information was not personal or individual in nature, within the meaning of section 1105(c)(1) of the Tax Law.

B. That information kept on file by both Retail Credit and Hooper-Holmes could be a significant contributing factor in the reports furnished applicants, and that such information could be substantially incorporated into reports furnished to other persons, within the meaning of section 1105(c)(1) of the Tax Law.

C. That pursuant to Conclusions of Law "A" and "B", applicants are liable for sales tax pursuant to section 1105(c)(1), each as a customer under section 1133(b), or are liable for compensating use tax under section 1110 of the Tax Law.

D. That the medical impairment reports from MIB during the periods at issue contained information which could be substantially incorporated in reports furnished to other members of MIB (persons under the Tax Law), and that all bills for services are for services within the meaning of section 1105(c)(1) of the Tax Law. Sperry Rand Corp. v. Tully, Sup. Ct. NYC, NYLJ June 20, 1977; CCH State Taxes-New York, para. 99-992, order aff'd 404 NYS 2d 216, appeal denied NY 2d (October 31, 1978).

E. That a refund claim, though concerning the same subject matter herein involved and for a time period herein at issue, cannot be the subject of an administrative hearing in the absence of a denial of that claim and of an application for a hearing pursuant to section 1139(b) of the Tax Law.

F. That the applications of Metropolitan Life Insurance Company and New York Life Insurance Company are granted to the extent that the penalty and interest in excess of the minimum statutory rate are 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 Metropolitan Life on June 13, 1975 and New York Life on October 31, 1975; and that, except as so


granted, the applications are in all other respects denied and the notices as issued are sustained.


DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER