

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Sears Roebuck & 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 Period 9/1/72 - 8/31/75. :

State of New York

County of Albany

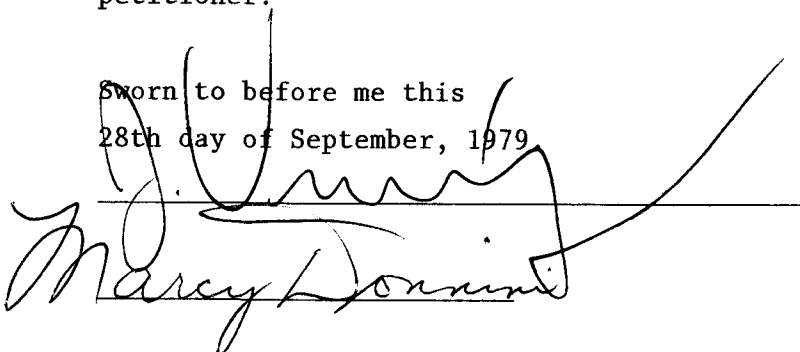
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Sears Roebuck & Co., the petitioner in the within proceeding,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

Sears Roebuck & Co.  
555 E. Lancaster Ave., Dept 568E  
St. Davids, PA 19087

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

  
Marcy Donnini

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Sears Roebuck & 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 :  
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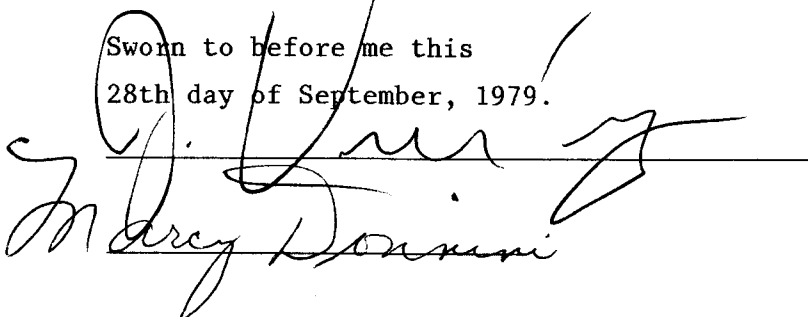
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Joseph H. Murphy the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Joseph H. Murphy  
Estabrook, Ryan, Shove & Hust  
One Mony Plaza  
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  
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

Sears Roebuck & Co.  
555 E. Lancaster Ave., Dept 568E  
St. Davids, PA 19087

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 B. Tully".

cc: Petitioner's Representative  
Joseph H. Murphy  
Estabrook, Ryan, Shove & Hust  
One Mony Plaza  
Syracuse, NY 13202  
Taxing Bureau's Representative

## STATE TAX COMMISSION

In the Matter of the Application :  
of :  
SEARS ROEBUCK & 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 periods September 1, :  
1972 through August 31, 1975. :

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 11, 1978 at 9:30 A.M. Applicant appeared by Hancock, Estabrook, Ryan, Shove & Hust, Esqs. (Joseph H. Murphy, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Barry M. Bresler, Esq. and Harry Kadish, Esq. of counsel).

I. Whether applicant is liable for use tax under Articles 28 and 29 of the Tax Law, for catalogs, tabloids and other direct-mail circulars sent directly to its customers without charge.

II. Whether advertising supplements which are incorporated into and sold with or delivered as part of a newspaper, periodical or shopping paper, are exempt from sales and use tax by virtue of section 1115(a)(5) of the Tax Law.

FINDINGS OF FACT

1. On July 1, 1976 as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Sears, Roebuck & Co. ("Sears"), for \$458,303.34, plus penalty and interest of \$192,874.19, for a total due of \$651,177.53. This was done on the grounds that catalogs and direct-mail circulars shipped into New York State, as well as newspaper supplements, were purchases subject to use tax.

2. Applicant is an international, retail chain store operation with approximately 100 locations in New York State, including both retail and catalog facilities. Applicant's total sales break down as follows:

- a) Eighty-one percent represents sales originating in retail units, including 12% from catalog sales therein.
- b) Nine percent represents catalog sales generated from other than retail stores.
- c) Ten percent represents industrial sales, repair services and finance charge revenues.

3. In the course of its business operations, applicant distributed a series of catalogs, tabloids, and other direct-mail circulars to its customers, without charge. The catalogs can be separated into five categories, namely, a spring and summer general catalog, a fall and winter general catalog, a mid-summer flyer, a mid-winter flyer and a Christmas catalog. In addition to these distributions, Sears also arranged for the production and

circulation of various newspaper supplements during the year.

4. The copy for the newspaper supplements was prepared at Sears' headquarters in Chicago and mailed to printers outside New York State. The printers prepared the supplements and sent them by common carrier to various newspapers, including some in New York. The newspapers then assembled the supplements, making them a part of the paper for general circulation on those days reserved by Sears for this purpose.

5. The direct-mail circulars were prepared in basically the same manner as were the newspaper supplements. The copy was prepared in Chicago and sent to a printer in Connecticut.

The circulars were then mailed by another Connecticut company directly to residents in New York State. The mailing list for these circulars was provided by Sears.

6. The copy for the tabloids was prepared in Sears' headquarters in Chicago and sent to a printer in Maryland for production. Once prepared, the tabloids were mailed directly to New York State residents designated by Sears.

7. The preparation and distribution of the various catalogs differed from the above. The copy was prepared by Sears in Chicago and sent to R.R. Donnelly. Using paper supplied by Sears, Donnelly prepared the catalogs, wrapped them and stamped them with Sears' mailing permit. Address labels were prepared by Sears and sent to Donnelly which affixed them to the catalogs. The methods of distributing the catalogs varied. With regard to the mid-summer flyers and mid-winter flyers, Donnelly placed them in mail sacks which were transported to a United States Post Office in Chicago, for delivery to residents of New York State. Because of their size, the spring general, fall general and Christmas catalogs are not mailed from Chicago.

These catalogs are delivered in "piggyback" trailers to the railroad in Chicago for shipment to various points east.

8. The trailers are unloaded at railroad ramps in Buffalo, Binghamton, Albany and Syracuse, as well as at three points in New Jersey. At those points, local trucking companies pick up the trailers and deliver the catalogs to United States Post Offices throughout New York State. In some cases, Donnelly would ship catalogs directly from Chicago to Post Offices in New York by motortruck transport.

CONCLUSIONS OF LAW

- A. That section 1110 of the Tax Law states, in part, the following:

Imposition of compensating use tax-...there is hereby imposed on every person a use tax for the use within this state... (A) of any tangible personal property purchased at retail...

- B. That "use" is defined in section 1101(b) (7) of the Tax Law as follows:

Use. 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.

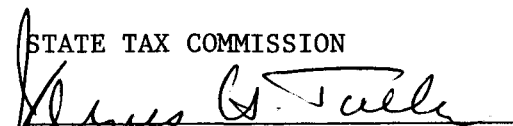
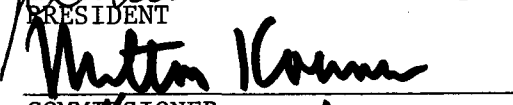
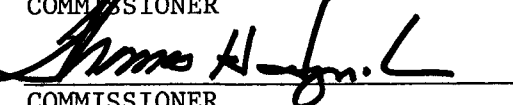
- C. That the mailing or shipping into New York State of tangible personal property in the nature of catalogs, tabloids and other direct-mail circulars which are sent by applicant directly to its customers without charge, is exempt from the imposition of a use tax, pursuant to sections 1110 and 1101(b) (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 advertising supplements, which are incorporated into and also sold with or delivered as part of a newspaper, periodical or shopping paper, are considered part of the newspaper, periodical or shopping paper; therefore, the purchase of the advertising supplements is exempt from the imposition of sales and use tax, pursuant to section 1115(a)(5) of the Tax Law.

E. That the application of Sears, Roebuck & Co. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 1, 1976 is cancelled.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER