

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
American Can 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 6/1/72-5/31/75. :

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 14th day of November, 1980, he served the within notice of Decision by mail upon American Can Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

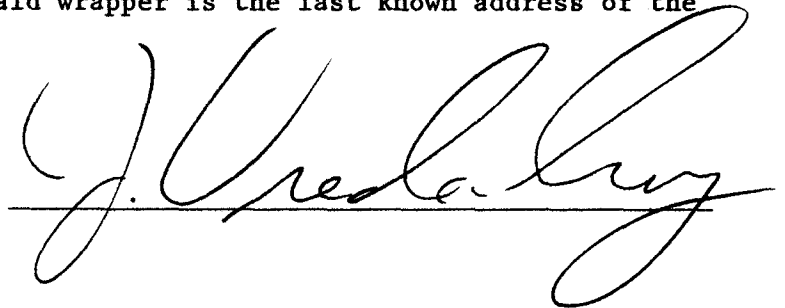
American Can Co.
American Lane
Greenwich, CT 06830

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
14th day of November, 1980.





STATE OF NEW YORK
STATE TAX COMMISSION

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of

American Can Co.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 6/1/72-5/31/75. :

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 14th day of November, 1980, he served the within notice of Decision by mail upon Jeffrey S. Cook and Grace J. Marchese the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs Jeffrey S. Cook and Grace J. Marchese
Bleakley, Platt, Schmidt & Fritz
80 Pine Street
New York, NY

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
14th day of November, 1980.

Deborah A. Bank

J. Vredenburg

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

November 14, 1980

American Can Co.
American Lane
Greenwich, CT 06830

Gentlemen:

Please take notice of the Decision 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:

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
Jeffrey S. Cook and Grace J. Marchese
Bleakley, Platt, Schmidt & Fritz
80 Pine Street
New York, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
AMERICAN CAN CO. DECISION
for Revision of a Determination or for
Refund of of Sales and Use Taxes under
Articles 28 and 29 of the Tax Law for
the Period June 1, 1972 through May 31,
1975.

Petitioner, American Can Co., American Lane, Greenwich, Connecticut 06830, filed a petition 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 June 1, 1972 through May 31, 1975 (File No. 14034).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1978 and February 8, 1979 at 1:15 P.M. and 9:15 A.M., respectively. Petitioner appeared by Bleakley, Platt, Schmidt & Fritz, Esqs. (Jeffrey S. Cook and Grace J. Marchese, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Jr., Esq., of counsel).

ISSUE

Whether the sale of computer time by petitioner's American Information Service Marketronics unit was subject to sales tax under section 1105(c)(1) of the Tax Law.

FINDINGS OF FACT

1. On December 2, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against American Can Co. stating:

"A recent sales and use tax audit of your records has resulted in the following to be due:

<u>QUARTER ENDING</u>	<u>TAX DUE</u>	<u>PENALTY & INTEREST</u>	<u>TOTAL</u>	<u>TOTAL</u>
08/72	\$ 434.67	\$ 186.90	\$ 621.57	
11/72	567.42	226.96	794.38	
02/73	3,071.26	1,136.36	4,207.62	
05/73	753.38	256.14	1,009.52	
08/73	496.02	153.76	649.78	
11/73	2,835.51	1,417.75	4,253.26	
02/74	3,992.46	1,836.53	5,828.99	
05/74	6,679.97	2,671.98	9,351.95	
08/74	8,811.66	2,995.96	11,807.62	
11/74	13,951.17	3,906.32	17,857.49	
02/75	13,737.37	3,022.22	16,759.59	
05/75	<u>14,497.39</u>	<u>2,319.58</u>	<u>16,816.97</u>	
TOTAL	\$69,828.28	\$20,130.46	\$89,958.74	\$89,958.74"

2. Petitioner had a unit named American Information Service Marketronics, hereinafter, at times, referred to as "A.I.S." and the sales tax which is in issue, herein, represents four percent (4%) of its receipts from sales of computer time during the periods ending August, 1972 through May, 1975.

3. A.I.S.' customers were exclusively in the advertising industry, i.e. they were advertisers, advertising agencies and advertising media, such as newspapers, magazines, etc.

4. A.I.S. was engaged in the business of providing what is commonly known as "time sharing" services to its customers. A.I.S. received and stored consumer surveys and reports in its computer bank for dissemination to its customers. Hereinafter, the surveys and reports are referred to as "data".

5. The data was received by A.I.S. in the form of magnetic computer tape from various independent companies known as market research survey firms. The data had been exclusively compiled, edited and analyzed by the market research survey firms. A.I.S. did not pay nor was it charged a fee by the market research survey firms for the privilege of receiving, storing or disseminating the computerized data.

6. A.I.S.' customers paid a monthly charge for the right to interrogate and retrieve the data from the computer. The data furnished by A.I.S. was not personal or individual in nature.

7. A.I.S. was required in its contracts with the market research survey firms to restrict access to the computerized data to only those customers that had purchased the data in book form, in the first instance, from said firms. The market research survey firms collected sales tax at the time of all sales of data in book form.

8. A.I.S. performed no function in the transmission process except to provide its customers with the means to retrieve the data. Each customer provided for the installation of a terminal in its own place of business and requested on its own initiative the data through the use of electrical impulses which searched the computer's storage bank. The computer, upon locating the requested data, transmitted it over telephone lines to the requesting customer.

9. The data retrieved from the computer was received in the same form as contained on the magnetic tapes supplied by the market research survey firms, i.e., the data had not been edited, altered or analyzed by A.I.S.

10. A.I.S. did not, at any time, obtain title to the data base nor the magnetic tapes.

CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law provides as follows:

"§ 1105 Imposition of sales tax.

On and after June first, nineteen hundred seventy-one, there is hereby imposed...a tax...upon:

* * *

(c) The receipts from every sale, except for resale, of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may

not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news."

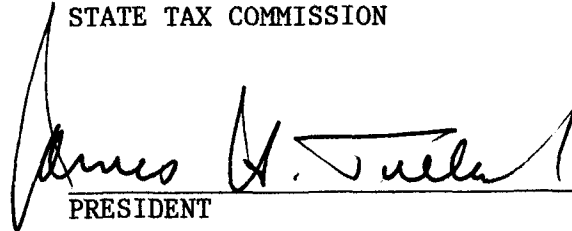
B. That A.I.S. was engaged in the furnishing of information subject to tax under section 1105(c)(1) of the Tax Law.

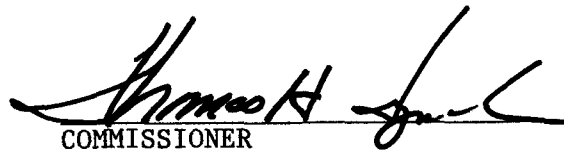
C. That the petition of American Can Co. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 2, 1975 is sustained.

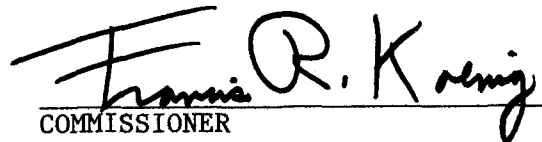
DATED: Albany, New York

NOV 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER