

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Clark Color Laboratories :  
Div. of District Photo, 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 2/28/67 through 5/31/76. :

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 March, 1980, he served the within notice of Determination by mail upon Clark Color Laboratories, Div. of District Photo, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clark Color Laboratories  
Div. of District Photo, Inc.  
10619 Baltimore Ave.  
Beltsville, MD 20705

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 March, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Clark Color Laboratories :  
Div. of District Photo, 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 2/28/67 through 5/31/76. :

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 March, 1980, 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  
Hancock, Estabrook, Ryan, Shove & Hust  
1400 Mony Plz.  
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 March, 1980.

Joanne Krapp

J. Vredenburg

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

March 28, 1980

Clark Color Laboratories  
Div. of District Photo, Inc.  
10619 Baltimore Ave.  
Beltsville, MD 20705

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:

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  
Joseph H. Murphy  
Hancock, Estabrook, Ryan, Shove & Hust  
1400 Mony Plz.  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
CLARK COLOR LABORATORIES	:	DETERMINATION
DIVISION OF DISTRICT PHOTO, INC.	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of Tax Law for the	:	
Periods Ended February 28, 1967 through	:	
May 31, 1976.	:	

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Applicant, Clark Color Laboratories Division of District Photo, Inc., 10619 Baltimore Avenue, Beltsville, Maryland 20705, 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 ended February 28, 1967 through May 31, 1976 (File No. 16981).

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 28, 1977 at 9:15 A.M. Applicant appeared by Hancock, Estabrook, Ryan, Shove & Hust, Esqs. (Joseph H. Murphy, Esq., of counsel) and by Jacobs, Speiller & Jacobs, Esqs. (Lewis Jacobs and William M. Speiller, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (James J. Morris and Harry Kadish, Esqs., of counsel).

ISSUES

I. Whether applicant is a vendor required to collect the tax imposed by Articles 28 and 29 of the Tax Law on the retail sale of tangible personal property to persons in New York.

II. If applicant is a person required to collect the tax imposed by Articles 28 and 29 of the Tax Law, whether the Audit Division's determination of sales tax being due is arbitrary and capricious.

III. Whether applicant has been unconstitutionally denied equal protection of law.

FINDINGS OF FACT

1. On July 20, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Clark Color Laboratories Division of District Photo, Inc. for the periods ending February 28, 1967 through May 31, 1976, in the amount of \$790,000.00 plus penalty and interest of \$469,050.00 for a total of \$1,259,050.00.

2. District Photo, Inc. (hereinafter referred to as "applicant"), a corporation located in and operating from Beltsville, Maryland, was primarily engaged in the business of developing and printing photographic film. It operated under the trade names of Clark Color Laboratories and Postal Photo Service.

3. During the period in question, applicant had over 800 independent dealers consisting of drug and specialty stores, thirteen camera stores, and a large number of drive-in photographic developing operations. No independent dealer, camera store, or drive-in operation was located in New York.

4. Applicant solicited orders through inserts in newspapers, magazines and also used direct-mail appeals. These appeals were made in New York, as well as in other states across the nation. The magazines used (Family Circle and Women's Day) were national in scope, but operated on a regional basis, with a region encompassing more than one state. The newspapers used were the newspapers of the principal cities of the United States. Two such New York newspapers used were the New York Sunday News and the Long Island Times. In each type of appeal, a customer would receive a pre-addressed envelope into which they could insert their film and remittance. After attaching the proper postage, the customer would mail the envelope to applicant.

5. For the tax period involved, applicant maintained one and sometimes two post office boxes in the United States Post Office located at 380 West 33rd Street, New York, New York. The postal boxes were maintained by applicant in the name of either Clark Color Laboratories or Postal Photo Service. The envelopes which customers mailed were pre-addressed to one or the other of these post office boxes, under either of the above given names. Twenty-nine percent of applicant's business came through these boxes.

6. Applicant maintained the post office boxes in New York because it had determined by marketing statistics that a customer on the initial order would prefer to do business with a box number located in New York, rather than a box number located elsewhere.

7. The post office assembled all of the mail addressed to applicant's post office boxes. This assemblage was then picked up by common carrier and delivered to applicant's Maryland plant. Applicant would develop and print the film. After processing, applicant mailed the completed work to the customer from the United States Post Office in Hyattsville, Maryland, together with promotional material and two envelopes pre-addressed to a Washington, D.C., location. The additional envelopes were for customers to use for subsequent orders. The enclosed promotional material urged the customer to purchase further services and goods from applicant such as enlargements, fresh film, photographic albums, and greeting cards.

8. All customer complaints were handled by United States mail.

9. To facilitate its promotional activities, applicant retained through its advertising agency, the services of Buffalo Press located in Buffalo, New York. Buffalo Press received applicant's promotional materials which were printed outside New York and then shipped to Buffalo Press by common carrier. When Buffalo Press received the promotional materials, it inserted them into

the comic sections of newspapers before it distributed said sections to newspapers across the country.

10. Applicant did send its technical personnel to Rochester, New York, for periods of one to five days. In Rochester, the employees received training and attended meetings and seminars, all of which were conducted by the Eastman Kodak Company. This was done to aid applicant in the conduct of its business.

11. Applicant refused to provide the Department of Taxation and Finance with any information regarding its operations. It refused to provide the information, even though it offered evidence that some records were kept of the geographical source of its orders.

12. Applicant did not file returns for the period involved on the advice of counsel.

#### CONCLUSIONS OF LAW

A. That District Photo, Inc. made sales to persons in New York State of tangible personal property and services the use of which is subject to the tax imposed by Articles 28 and 29 of the Tax Law.

B. That District Photo, Inc. solicited business from persons in New York, in that it placed advertisements in New York newspapers requesting that orders and payments be sent to a New York address. Orders and payments were sent to a New York address.

C. That District Photo, Inc. is a vendor required to collect the tax imposed by Articles 28 and 29 of the Tax Law.

D. That District Photo, Inc. has failed to prove that the determination of sales and/or use tax due as calculated by the Audit Division was arbitrary or capricious.

E. That the State Tax Commission has acted, in its judgment, to produce a reasonable system of taxation. Applicant has failed to explicitly demonstrate

that it has been the victim of hostile and oppressive discrimination, resulting in the denial of equal protection of the law.

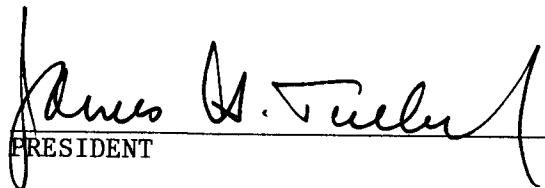
F. That District Photo, Inc. did not file sales and/or use tax returns because it reasonably relied on the advice of counsel; therefore, all penalties are cancelled and interest is reduced to the statutory minimum

G. That, the application of District Photo, Inc. is granted to the extent provided in Conclusion of Law "F", but that except as so granted the application is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes is otherwise sustained.

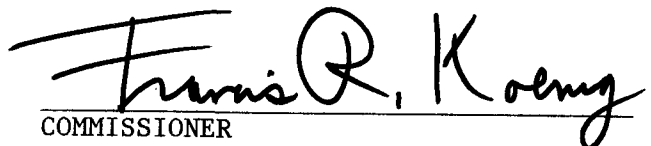
DATED: Albany, New York

STATE TAX COMMISSION

MAR 28 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER