STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Cut-Outs, 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 6/1/74 - 5/31/77. :

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 3rd day of October, 1980, he served the within notice of Decision by mail upon Cut-Outs, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cut-Outs, Inc.
107 Grand St.
New York, NY 10002

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
3rd day of October, 1980.

Dietta Bank

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Cut-Outs, 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 6/1/74 - 5/31/77. :

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 3rd day of October, 1980, he served the within notice of Decision by mail upon Lloyd DeVos 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. Lloyd DeVos
Hill, Betts & Nash
One World Trade Ctr. Suite 5215
New York, NY 10048

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
3rd day of October, 1980.

Arthur Bank

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

October 3, 1980

Cut-Outs, Inc.
107 Grand St.
New York, NY 10002

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
Lloyd DeVos
Hill, Betts & Nash
One World Trade Ctr. Suite 5215
New York, NY 10048
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CUT-OUTS, INC.	:	DECISION
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 June 1, 1974 through May 31, 1977.	:	

Petitioner, Cut-Outs, Inc., 107 Grand Street, New York, New York 10002, 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, 1974 through May 31, 1977 (File No. 21341).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 24, 1980 at 1:15 P.M. Petitioner appeared by Lloyd DeVos, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether cutting dies purchased by petitioner were for resale within the meaning and intent of section 1101(b)(4)(i) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Cut-Outs, Inc., is engaged in die cutting, mounting and finishing work for the graphic arts industry. Petitioner acts as a subcontractor for printers and lithographers.

2. On November 9, 1977, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period June 1, 1974 through May 31, 1977 for taxes due of $4,960.95 plus penalty and interest of $1,898.96 for a total of $6,859.91.

3. Petitioner executed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes for the period June 1, 1974 through May 31, 1977, to September 19, 1978.

4. The audit performed by the Audit Division held petitioner liable for the New York City local tax of $4,960.95 on purchases of dies during the period in issue. The Audit Division took the position that the dies are equipment used by petitioner in its production process and as such, are exempt from the New York State sales and use tax but are subject to the New York City local tax.

5. Petitioner purchased steel rule cutting dies made to specifications provided by the customer. The dies were used by petitioner in its cutting presses. Upon completion of petitioner's work, the dies became the property of the customer. As an accommodation to the customer, petitioner stored the dies for a period of two years. If within the two year period the customer requested the die it was sent to him. Otherwise, the dies were discarded by petitioner.

Petitioner charged a lump sum price for its work. The price reflected a charge for the die, however, such amount was not shown separately on the customer's invoice. A customer was not charged for the die on reorders or in those instances where the customer provided the necessary die.

Based on the foregoing, petitioner concluded that the cutting dies were purchased for resale to its customers. Petitioner went on to argue that the assertion of tax on its die purchases would result in a pyramiding of tax since the purchaser of the printed matter ultimately paid the tax on the die.

6. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the cutting dies purchased by petitioner were used in its production process prior to any transfer of title or possession thereto and that such use precluded petitioner from purchasing said dies for resale within the meaning and intent of section 1101(b)(4)(i) of the Tax Law. (Matter of the Application of Baronet Lithograph Co., State Tax Commission, August 25, 1978.)

B. That the penalties and interest in excess of the minimum statutory rate imposed pursuant to section 1145(a) of the Tax Law, are cancelled.

C. That the petition of Cut-Outs, Inc., is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 9, 1977 and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

OCT 0 2 1980