

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Executive Research Inst., Inc. :  
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 8/1/65-11/30/69. :

AFFIDAVIT OF MAILING

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 Executive Research Inst., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Executive Research Inst., Inc.  
200 Madison Ave.  
New York, NY 10003

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 Krapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Executive Research Inst., Inc. :  
for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
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AFFIDAVIT OF MAILING

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 Victor Pellegrino 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. Victor Pellegrino  
Hugh Janow, Esq.  
100 Park Ave.  
New York, NY 10017

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 Knapp

J. C. Vredenburg

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

March 28, 1980

Executive Research Inst., Inc.  
200 Madison Ave.  
New York, NY 10003

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 month 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  
Victor Pellegrino  
Hugh Janow, Esq.  
100 Park Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
EXECUTIVE RESEARCH INSTITUTE, INC.	:	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 Period August 1, 1965 through	:	
November 30, 1969.	:	

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Applicant, Executive Research Institute, Inc., 200 Madison Avenue, New York, New York 10003, 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 period August 1, 1965 through November 30, 1969 (File No. 00338).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 30, 1977 at 10:30 A.M. Applicant appeared by Hugh Janow, Esq. (D. Victor Pellegrino, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

- I. Whether mailing lists are subject to the Sales and Use Tax Law.
- II. Whether there is an exclusion from taxation for that portion of the mailing lists which relates to out-of-state addresses.
- III. Whether the penalty and interest imposed should be cancelled.

FINDINGS OF FACT

1. Applicant, Executive Research Institute, Inc., located at 200 Madison Avenue, New York, New York, engaged in the sale of books and pamphlets through the mail order media and employed the mailing lists in the solicitation of business.

2. On September 11, 1970, as a result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$4,116.91, plus penalty and interest of \$1,976.02, for a total due of \$6,092.93 for the period August 1, 1965 through November 30, 1969.

3. The only item at issue in this hearing is the tax in the amount of \$3,030.59 imposed by the Sales Tax Bureau on mailing lists applicant used in direct mail advertising. Said lists were prepared and delivered to applicant in New York City. Applicant concedes the taxes due for the remainder of the assessment.

4. The mailing lists were a series of "Cheshire Labels" which were affixed to applicant's envelopes or advertising brochures.

5. Applicant argued the portion of the mailing lists purchased pertaining to customers located outside of New York State should be excluded from taxation. Applicant introduced into evidence a letter dated January 17, 1967, signed by Kermit J. Smith, Chief, Instructions and Interpretation Unit wherein the Sales Tax Bureau conceded that its position at that time was that sales tax should only be imposed on that portion of the selling price of the mailing lists in question which relate to addresses within New York State.

Applicant contended the mailing lists contained a de-minimis amount of addresses that were mailed to New York State residents.

6. Applicant did not produce any documentary or other substantial evidence, or produce any witness to substantiate its contention.

7. Applicant acted in good faith at all times and there was no intent to evade the tax.

CONCLUSIONS OF LAW

A. That the transfer of mailing lists in the form of Cheshire Labels, constitutes the sale of tangible personal property within the meaning of section 1101(b)(5) of the Tax Law and is taxable under section 1105(a) of the Tax Law or, in the alternative, a taxable service within the intent and meaning of section 1105(c)(1) of the Tax Law.

B. That applicant failed to sustain its burden of proof that any part of the mailing lists in question related to out-of-state names and addresses; that, therefore, the question of exclusion from taxation for such portion of the mailing lists is moot.

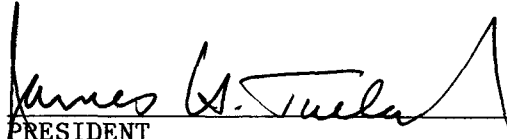
C. That the penalty and interest in excess of the minimum statutory rate are cancelled.


D. That the application of Executive Research Institute, Inc. is granted to the extent indicated in Conclusion of Law "C" above. The Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 11, 1970; and that, except as so granted, the application is in all other respects denied.

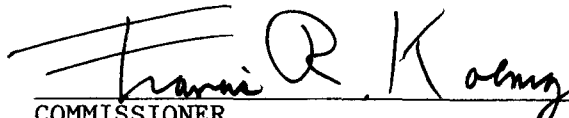
DATED: Albany, New York

STATE TAX COMMISSION

MAR 28 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER