

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Great Lakes Color Printing Corp. :
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. :

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 27th day of June, 1980, he served the within notice of Determination by mail upon Great Lakes Color Printing Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Great Lakes Color Printing Corp.
c/o Paul C. Hilbert
302 Grote St.
Buffalo, NY 14207

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
27th day of June, 1980.

Dorothy A. Bank

J. Vredenburg

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

June 27, 1980

Great Lakes Color Printing Corp.
c/o Paul C. Hilbert
302 Grote St.
Buffalo, NY 14207

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) 1139 & 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

GREAT LAKES COLOR PRINTING CORP. :

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 September 1, :
1972 through August 31, 1975.

Applicant, Great Lakes Color Printing Corp., 302 Grote Street, Buffalo, New York 14207, 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 September 1, 1972 through August 31, 1975 (File No. 12875).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, One West Genesee Street, Buffalo, New York, on April 24, 1979 at 9:15 A.M. Applicant appeared by Paul C. Hilbert, Director of Taxes. The Audit Division appeared by Peter Crotty, Esq. (Kathy Sanderson, Esq., of counsel).

ISSUES

I. Whether certain transactions between applicant and Buerk Tool and Machine Corp. constituted purchases of services or purchases of machinery or equipment.

II. Whether certain purchases made by applicant were purchases for "resale" and therefore exempt from the payment of sales tax.

FINDINGS OF FACT

1. On December 12, 1975, applicant, Great Lakes Color Printing Corp., filed an Application for Credit or Refund of State and Local Sales or Use Tax in the amount of \$22,011.75 covering the periods September 1, 1972 through August 31, 1975. The amount of said refund claim represents sales taxes paid to Buerk Tool and Machine Corp. ("Buerk") on labor charges which were allegedly for production machinery, equipment and parts exempt from the imposition of sales tax.

2. On February 6, 1976, the Sales Tax Bureau denied the refund claim on the grounds that the labor charges were for the alteration, renovation or repair of machinery and equipment and thus subject to sales tax.

3. On February 10, 1976, applicant applied for a revision of the Sales Tax Bureau's denial of its refund claim.

4. Applicant, Great Lakes Color Printing Corp., is a New York Corporation with production facilities located in Dunkirk, New York. Applicant is primarily engaged in the printing of color comics and color advertising circulars. It is one of ten affiliated corporations of Greater Buffalo Press, Inc.

5. Applicant, Great Lakes Color Printing Corp., used letterpress printing equipment in its four color printing operation. It did not purchase such equipment new, but rather purchased used letterpresses which it converted or modified for four color printing.

Applicant not only purchased and modified used presses for its own use, but also for use by the other affiliated printing corporations of Greater Buffalo Press, Inc.

6. Applicant's refund claim involves the sales taxes paid in connection with the conversion of three letterpresses having the serial numbers 3005B, 3006A and 2164-68. During the period in issue, applicant purchased used letterpresses from The Hearst Corp. and the New York News. The presses were dismantled and

shipped to applicant's warehouse in Dunkirk, New York where the conversion process was performed. When the used presses were purchased, it had not been determined at which affiliated corporation the converted press would be erected. Therefore, for accounting purposes, a project account was set up on the books of Great Lakes Color Printing Corp. The acquisition of said presses and the expenditures relating to the conversion were changed to the appropriate project account. When the conversion was completed, the press was assembled at the location where the press was needed. Press #2164-68 was erected and in in operation at applicant's facility in Dunkirk, New York. Press #3005 B was erected at Southwest Color Printing Corp. in Lufkin, Texas and press #3006 A was erected at Greater Canada Color Printing Corp. in Ontario, Canada. Applicant sold press #3005 B and press #3006 A to the affiliated corporations for the cost that had been recorded in the project account.

7. In order to adapt the letterpresses to a four color printing process, extensive modifications were necessary. A letterpress, generally used in newspaper printing, has its reel stands located underneath the press. Applicant's process requires the reel stands to be on the end of the press on the same level as the press. Consequently, the entire roll mechanism of the press must be reconstructed. Applicant also used a different width of paper which required changing the diameter of the folder assembly and bedplates. Other typical modifications include the reworking or remachining of the cylinders, bearings and bushings.

The aforesaid modifications were primarily performed by Buerk. Applicant normally furnished to Buerk an existing piece of equipment or part of the used press to be reworked or fabricated. However, in some instances, Buerk constructed or produced new parts from drawing specifications prepared by engineers employed by Buerk. Buerk's invoices to the applicant for the work performed listed charge

for labor and for materials separately. The sales tax was charged and collected on only the labor portion of the invoice. The sales taxes paid to Buerk is the basis of applicant's refund claim.

8. Applicant contended that the labor and material charges by Buerk constituted purchases of equipment and parts which are exempt from sales tax under section 1115(a)(12) of the Tax Law and that the form of the invoice rendered should not be a factor in determining whether the purchase was subject to tax.

Applicant further contended that the purchases relating to press #3005 B and #3006 A became component parts of said presses and that these presses were resold to Southwest Color Printing Corp. in Lufkin, Texas and Greater Canada Color Printing Corp. in Ontario, Canada. Therefore, it concluded that these purchases were for resale and not subject to sales tax.

9. The sales tax paid to Buerk on purchases for press numbers 3005 B and 3006 A amounted to \$104.13 and \$11,584.82 respectively.

CONCLUSIONS OF LAW

A. That the work performed by Buerk Tool and Machine Corp. on tangible personal property furnished by applicant constituted producing, fabricating or processing within the meaning and intent of section 1105(c)(2) or servicing or repairing tangible personal property pursuant to section 1105(c)(3) of the Tax Law and therefore is subject to the imposition of sales tax. However, said services purchased by applicant in connection with equipment and parts modified for press numbers 3005 B and 3006 A are purchases for "resale" within the meaning and intent of section 1105(c) of the Tax Law in that said services were performed on parts and equipment that became component parts of printing presses which were sold by applicant; therefore, applicant is entitled to a refund of sales taxes paid on such services in the amount of \$11,688.95.

B. That in those instances where applicant did not furnish tangible personal property to Buerk for modification but rather requested the manufacture of new parts and equipment it made retail purchases of production machinery; however, applicant was unable to show where any such purchases were part of the refund claim.

C. That the application of Great Lakes Color Printing Corp. is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is hereby directed to refund the same and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York
JUN 27 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER