

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Home Life Insurance 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 3/1/73 - 2/28/76. :

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 November, 1980, he served the within notice of Decision by mail upon Home Life Insurance Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Home Life Insurance Co.
253 Broadway
New York, NY 10008

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 November, 1980.

Ethel A. Bank

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 November, 1980, he served the within notice of Decision by mail upon Howard B. Stravitz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

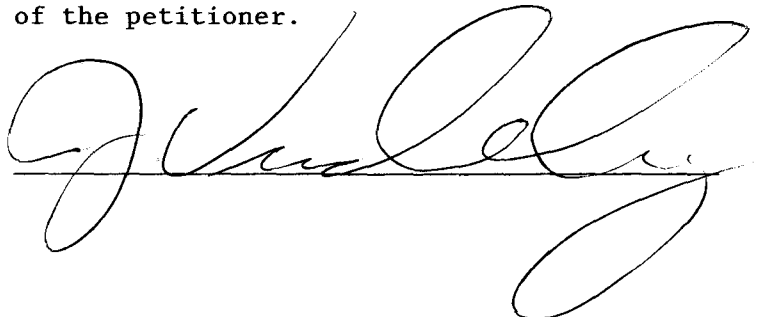
Mr. Howard B. Stravitz
Cleary, Gottlieb, Steen & Hamilton
1 State St. Plaza
New York, NY 10004

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 November, 1980.

Detach A Bank



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

November 28, 1980

Home Life Insurance Co.
253 Broadway
New York, NY 10008

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
Howard B. Stravitz
Cleary, Gottlieb, Steen & Hamilton
1 State St. Plaza
New York, NY 10004
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HOME LIFE INSURANCE CO.	:	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 period March 1, 1973 to	:	
February 28, 1976.	:	

Petitioner Home Life Insurance Co., 253 Broadway, New York, New York 10008, 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 March 1, 1973 to February 28, 1976 (File No. 18384).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 23, 1979 at 9:15 A.M. Petitioner appeared by Cleary, Gottlieb, Steen & Hamilton, Esqs. (Howard B. Stravitz, Esq. and Roger W. Thomas Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Bruce Zalman, Esq., of counsel).

ISSUE

Whether information reports supplied to petitioner by Equifax, Inc. were subject to the imposition of sales and use tax pursuant to section 1105(c)(1) of the Tax Law.

FINDINGS OF FACT

1. On January 12, 1977, pursuant to an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Home Life Insurance Co. in the amount of \$110,249.66 plus penalty and

interest. Of said amount, \$104,699.28 represented the taxes that were determined due on purchases from Equifax, Inc. The balance remaining of \$5,550.38 is not in dispute.

2. Investigative reports were furnished to Home Life Insurance Co. by Equifax, Inc. pursuant to a service agreement. Home Life compensated Equifax for each report furnished, the amount of compensation depending upon the nature and scope of the report. The rates were either fixed for a particular type of report, or based on an hourly rate. Both the fixed rate and the hourly rate varied depending upon the geographic location in which the investigation was carried out. During the last portion of the period covered by the assessment at issue, the fixed rate for the least expensive report furnished to Home Life varied from a low of \$6.80 to a high of \$19.15. The fixed rate for the most expensive report furnished varied from \$37.40 to \$105.35. During this same period the hourly rate for reports prepared on a time basis ranged from a low of \$15.50 per hour to high of \$34.80 per hour. Home Life was billed monthly by Equifax with a statement showing the cost of each report furnished.

The investigative reports furnished to Home Life by Equifax are of three principal varieties: (1) life insurance underwriting and related reports, which are used to evaluate the suitability of an applicant for a particular life insurance policy; (2) life and group health insurance claims reports, which assist Home Life in determining whether to pay or contest a claim; and (3) prospective employee investigative reports, which aid Home Life in making employment decisions. Of these three principal types of reports requested by Home Life, life insurance underwriting reports are by far the most important, both in number and cost.

Equifax is licensed by the State of New York as a private investigative agency. It will only render investigative reports to entities that enter into service agreements with it. Services provided by Equifax are not available to the general public and it will not make such a report available to the general public. Equifax reports are not generally available to law enforcement agencies.

3. Upon request for an information report by one of its subscribing members, Equifax may have a file on an individual due to a prior request for information on the individual, and this file may be used as a source of basic information.

In addition to the availability for incorporating into a report this basic information available in Equifax files, a current investigation is conducted by Equifax, if needed, to update an individual's life history.

4. Petitioner acted in good faith.

CONCLUSIONS OF LAW

A. That section 1105 of the Tax Law provides, in part, as follows:

"Sec. 1105. ...there is hereby imposed and there shall be paid 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 the policy of the State Tax Commission with respect to Section 1105(c)(1) of the Tax Law may be found in its current regulations, i.e., 20 NYCRR 527.3(a)(2) and 527.3(a)(4)(i), effective September 1, 1976.

20 NYCRR 527.3(a)(2) provides as follows:

"(2) The collecting, compiling or analyzing information of any kind a nature and the furnishing reports thereof to other persons is an information service."

20 NYCRR 527.3(a)(4)(i) provides as follows:

"(4) Charges for credit information services, other than those that are transmitted orally, are subject to tax. The following rules shall apply in determining taxability of services that include both oral and written reports:

(i) Any fee for a written report is taxable."

C. That Equifax provided information services to Home Life Insurance Co., and other subscribing members, and was compensated for such services. Some of the basic information provided in the reports was already present and available in Equifax files due to prior information requests from petitioner and/or others; therefore petitioner, Home Life Insurance Co., was subject to the imposition of sales and use taxes within the meaning of section 1105(c)(1) of the Tax Law and 20 NYCRR 527.3(a)(2) and (4).


D. That the petition of Home Life Insurance Co. is granted to the extent that penalty and interest in excess of the minimum authorized by section 1145(a) of the Tax Law is waived; that the Audit Division is directed to accordingly modify the notice of deficiency issued January 12, 1977 and; that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER