

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Levy Bros., Plattsburgh 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 6/1/72 - 5/31/75. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

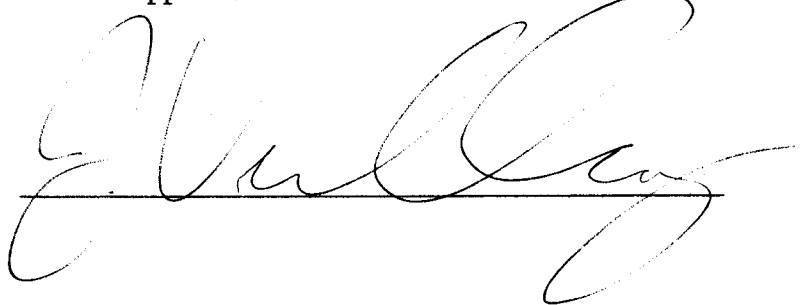
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of October, 1980, he served the within notice of Decision by mail upon Levy Bros., Plattsburgh Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Levy Bros., Plattsburgh Inc.
Sharron Ave.
Plattsburgh, NY 12901
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.

Nottie Bank



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Levy Bros., Plattsburgh 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 6/1/72 - 5/31/75. :

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 3rd day of October, 1980, he served the within notice of Decision by mail upon Sanford Jaffee 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. Sanford Jaffee
Kessler, Bernstein and Jaffee
75 State St.
Albany, NY 12207

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.

Justice Bank

[Signature]

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

October 3, 1980

Levy Bros., Plattsburgh Inc.
Sharron Ave.
Plattsburgh, NY 12901

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
Sanford Jaffee
Kessler, Bernstein and Jaffee
75 State St.
Albany, NY 12207
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEVY BROS. PLATTSBURGH, 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 Period June 1, 1972	:	
through May 31, 1975.	:	

Petitioner, Levy Bros. Plattsburgh, Inc., Sharron Avenue, Plattsburgh, New York 12901, 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, 1972 through May 31, 1975 (File No. 21815).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on January 11, 1980 at 10:45 A.M. Petitioner appeared by Sanford Jaffee, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether catalogs purchased and delivered to petitioner in New York State are subject to the use tax imposed by section 1110(A) of the Tax Law.

FINDINGS OF FACT

1. On September 19, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Levy Bros. Plattsburgh, Inc. for the period June 1, 1972 through May 31, 1975 in the amount of \$1,579.80 tax plus penalties and interest. The Notice was issued as a result of a field audit.

2. On audit, the Division found that petitioner was purchasing catalogs for distribution to its prospective customers without payment of tax. It held a use tax due of \$1,447.45 on these catalogs. The remainder of the Notice is not at issue.

3. Petitioner was engaged in the sale of general merchandise through catalogs and a showroom in Plattsburgh, New York. Catalogs were purchased from Federated Merchandising Corporation, who ordered the printing of the catalogs for merchandising dealers such as petitioner. All of the catalogs were printed outside New York State and delivered to Plattsburgh for distribution by petitioner to its prospective customers free of charge.

4. Petitioner contended that the catalogs were advertising matter and should have been afforded the same exemption as supplements to newspapers. The catalogs at issue were not delivered with newspapers as supplements.

5. Petitioner contended that based on zip codes used for mailings, 42 percent of the catalogs were subsequently mailed to prospective customers outside New York State. It failed to introduce any evidence to document its contention.

6. Petitioner offered no evidence to show that reasonable cause existed for not paying over any of the tax asserted due.

CONCLUSIONS OF LAW

A. That the purchase of catalogs by the petitioner were purchases at retail as defined by section 1101(b)(1) of the Tax Law.

B. That section 1110 of the Tax Law imposes a use tax for the use within this state, (A) of any tangible personal property purchased at retail; therefore, the purchase of catalogs by the petitioner is subject to the imposition of compensating use tax within the meaning and intent of section 1110(A).

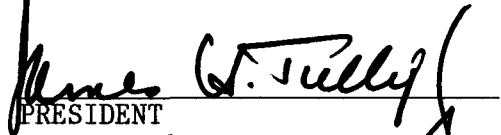
C. That the use tax imposed by section 1110(A) of the Tax Law is due on all of the catalogs delivered into New York since petitioner failed to show by credible evidence that any of the catalogs were subsequently delivered to customers outside New York State.

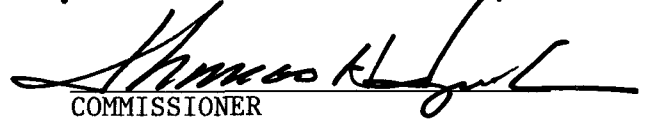
D. That the petition of Levy Bros. Plattsburgh, Inc., is denied; and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 19, 1975 is sustained, together with penalties and interest thereon.

DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER