

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Muzak Corp.

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 Years 6/1/71-5/31/74. :

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 11th day of January, 1980, he served the within notice of Determination by mail upon Muzak Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Muzak Corp.
100 Park Ave.
New York, NY 10036

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Muzak Corp. :

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 Years 6/1/71-5/31/74. :

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 11th day of January, 1980, he served the within notice of Determination by mail upon Bernard Rubin 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. Bernard Rubin
888 7th Ave.
New York, NY

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

Muzak Corp.
100 Park Ave.
New York, NY 10036

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 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
Bernard Rubin
888 7th Ave.
New York, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MUZAK CORPORATION	:	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 June 1, 1971 through May 31,	:	
1974.	:	

Applicant, Muzak Corporation, 100 Park Avenue, New York, New York 10036, 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 June 1, 1971 through May 31, 1974 (File No. 15127).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1978 and on August 22, 1978. Applicant appeared by Bernard Rubin, assistant treasurer of applicant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether applicant's monthly payments to WPIX, Inc. were for a radio transmission service, in which event such payments would not be subject to sales or use tax, or for the rental of electronic receiving and radio transmitting equipment, in which event such payments would be subject to sales or use tax.

FINDINGS OF FACT

1. Applicant, Muzak Corporation, is in the business of providing functional background music to various office buildings and retail establishments. Applicant filed New York State sales and use tax returns for the period June 1, 1971 through May 31, 1974.

2. The Sales Tax Bureau's audit of applicant's books and records for the period June 1, 1971 through May 31, 1974, resulted in an assessment which was partially agreed to by applicant. Applicant signed a consent form and paid tax, plus interest, on the portion of the audit findings which it agreed with. Applicant, however, disagreed with that portion of the audit findings which assessed compensating use tax on the \$1,500.00 in monthly charges which it paid to radio station WPIX-FM. This station is operated by WPIX, Inc.

3. On March 17, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant. Said Notice was for the period June 1, 1971 through May 31, 1974, in the sum of \$3,780.00 in additional tax, plus interest of \$1,767.15, for a total of \$5,547.15. The additional tax due was based on the monthly billing of \$1,500.00 to applicant by WPIX, Inc., which the Sales Tax Bureau deemed to be for the rental of WPIX, Inc.'s electronic receiving and radio transmitting equipment.

4. Applicant timely filed an application for a hearing to review the determination under Articles 28 and 29 of the Tax Law.

5. Pursuant to the contractual agreement between applicant and WPIX, Inc., applicant transmitted taped music from its place of business in New York City, via leased telephone lines, to radio station WPIX-FM. The station received this music on special electronic monitoring equipment and transmitted said music over a selected "initial sub-carrier" FM radio broadcast channel to customers of the Muzak background music in New York, New Jersey, and Connecticut. The initial sub-carrier FM facilities were for the exclusive use of Muzak music.

6. Section (1)(f) of the agreement between the applicant and WPIX, Inc. provided that "...WPIX shall have the right to pass on all material furnished by Muzak for multiplex transmission over the facilities of the Station and to reject any undesirable or inappropriate material...."

7. Applicant argues that it contracted with WPIX, Inc. for a radio transmission service which is not subject to sales tax under the Tax Law. It also argues that the transaction could not be considered a rental or lease of broadcasting equipment, since applicant did not have actual or constructive possession of the equipment.

8. Applicant did not provide any personnel for operation of the WPIX equipment and it had no direction over or control of said equipment. Such control would be against regulations of the Federal Communications Commission.

CONCLUSIONS OF LAW

A. That the contractual agreement between applicant, Muzak Corporation, and WPIX, Inc. was for the sale of a radio broadcast transmission service which is not subject to sales tax, under section 1105 of the Tax Law.

B. That the application of Muzak Corporation is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 17, 1976 is cancelled.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER