

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
New York Post 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 Period 3//73 - 5/16/76. :

State of New York
County of Albany

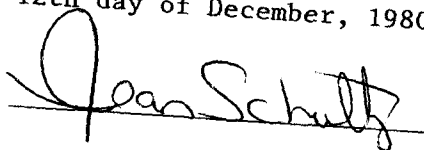
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Determination by mail upon New York Post Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

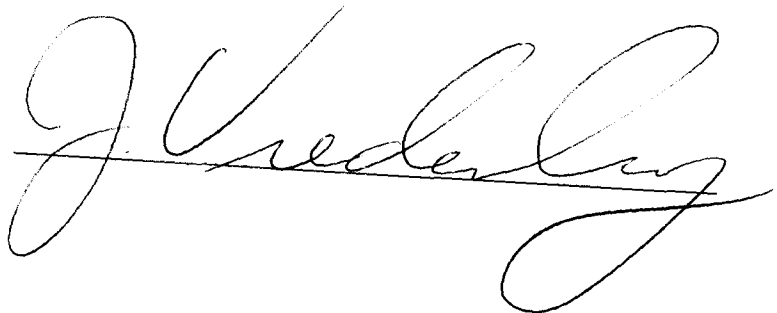
New York Post Corp.
210 South St.
New York, NY 10002

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
12th day of December, 1980.





STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :
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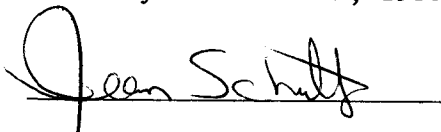
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Determination by mail upon Neal M. Goldman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

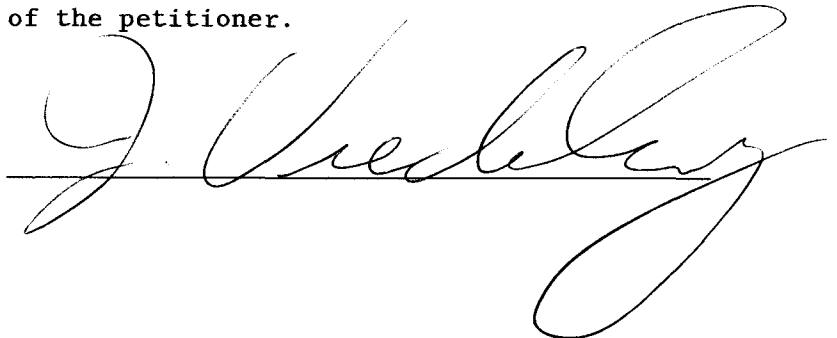
Mr. Neal M. Goldman
Squadron, Ellenoff, Plesent & Lehrer
551 Fifth Ave.
New York, NY 10017

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
12th day of December, 1980.


Jean Schultz


Jay Vredenburg

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

December 12, 1980

New York Post Corp.
210 South St.
New York, NY 10002

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
Neal M. Goldman
Squadron, Ellenoff, Plesent & Lehrer
551 Fifth Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
NEW YORK POST CORPORATION	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Sales and Use Tax under	:	
Articles 28 and 29 of the Tax Law for the	:	
Period March 1, 1973 to May 16, 1976.	:	

Applicant, New York Post Corporation, 210 South Street, New York, New York 10002, 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 March 1, 1973 to May 16, 1976 (File No. 17072).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1977 at 9:20 A.M. Applicant appeared by Squadron, Ellenoff, Plesent & Lehrer, Esqs. (Neal M. Goldman, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the purchase of engraving cuts and artwork by a newspaper publisher for use in producing its newspaper is exempt from sales and use taxes under section 1115(a)(12) of the Tax Law.

FINDINGS OF FACT

1. Applicant, New York Post Corporation ("Post"), timely filed sales tax returns for each of the periods March 1, 1973 through May 16, 1976, and paid the taxes shown to be due.

2. On May 26, 1976, applicant filed an Application for Credit or Refund of State and Local Sales and Use Tax (Form ST-137), amounting to \$47,142.27 for the period. The application contended that the Post's purchases of engraving cuts and related artwork had been subjected to sales tax by the seller, Graphics Specialties, Inc. d/b/a Universal Engraving Company (hereinafter "Universal"), and that engraving cuts and artwork were exempt from sales tax as machinery or equipment, within the meaning and intent of section 1115(a)(12) of the Tax Law.

3. On September 24, 1976, the Audit Division denied the application for refund of sales tax.

4. Applicant timely filed an application for a hearing for redetermination of the denial.

5. Applicant maintained accurate daily and monthly purchase records of engraving cuts, artwork, the gross purchase prices, separate sales taxes paid thereon, and the four percent New York State sales taxes paid during the period at issue. Invoices were shown to support schedules.

6. Applicant, a Delaware corporation, publishes an afternoon daily newspaper in New York City. In order to print photographs or drawings, an engraving cut must be produced from the original of such material. Applicant contracts with Universal to produce engraving matrices or "mats" from photos or drawings supplied by the Post.

It is sometimes necessary to position illustrations or type before preparing the engraving cuts. Such positioning is referred to as "artwork". The charge for it is relatively small and is separately stated on the invoice.

Universal engraves the material on zinc composition plates. These plates, called cuts, are mounted on a base so that they are the same height as the type. The set type and the cuts are locked into a steel frame, or chase,

the size of two pages of the newspaper. The chase is then sent to the stereotype department where it is placed in a press called a molder. In the molder, a fibrous sheet or mat is laid over the chase and, by means of heavy rollers, the impressions of the cuts and the type are expressed onto the mats. The mats are then put in another machine where molten lead forms the half-moon shaped printing plate. Only the printing plate makes contact with the newsprint.

7. Cuts are not consumed or worn by the matting process. They may be used again and again, and are usually stored in applicant's library. Sometimes they are discarded, but sometimes they are kept for as long as twenty years. Their use is intermittent when pertinent stories require pictures of past events or of newsworthy persons.

8. Engraving cuts operate harmoniously with the type, the molders, the mats and the presses, to make an integrated and synchronized system. They are necessary for the production of the newspaper and are physically and causally close to the finished product.

CONCLUSIONS OF LAW

A. That receipts from every sale of tangible personal property are taxable under section 1105(a) of the Tax Law except as otherwise provided in Article 28. Section 1115(a)(12) of the Tax Law exempts from sales and use taxes receipts from retail sales of:

Machinery or equipment for use or consumption directly and predominantly (read "exclusively" prior to amendment effective Sept. 1, 1974) in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus.

B. That engraving cuts constitute equipment for use directly and exclusively in the production of tangible personal property, within the intent and meaning of the Tax Law, therefore, they are exempt from sales taxes. (Section 1115(a)(12) of the Tax Law; see also Niagara Mohawk Power Corp. v. Wanamaker, 286 A.D. 446, 144 N.Y.S.2d 458 (4th Dept., 1955), aff'd, 2 N.Y.2d 764, 157 N.Y.S.2d 972 (1956).)

C. That the Department of Taxation and Finance has defined stereotype matrices (mats) and the like as equipment. In the absence of a statutory definition, the administrative findings of the agency must be given great weight. (1968 NYTB -Vol. 1, p. 70, CCH - 5 NY Tax Cases, Par. 99-150 (3-26-68).)

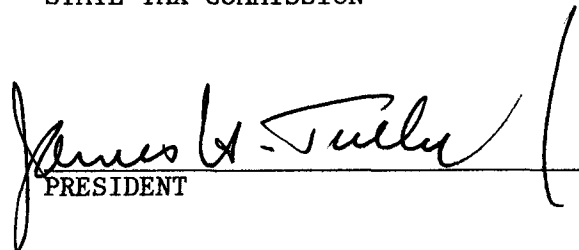
D. That "artwork" is an element in the total cost of engraving cuts and a part of the receipt from the purchase of said cuts pursuant to the intent and meaning of section 1101(b)(3) of the Tax Law.

E. That the application of New York Post Corporation for redetermination of the denial of applicant's claim for refund is granted. The denial is cancelled and the Audit Division is directed to refund the sum of \$47,142.27 to applicant, together with such interest as may be lawfully due.

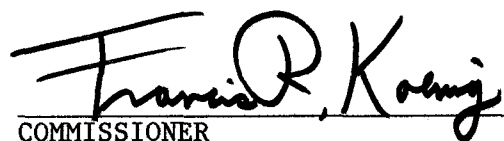
DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER