

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Outlet Book Co., 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 3/1/70-2/28/73. :

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 4th day of April, 1980, he served the within notice of Determination by mail upon Outlet Book Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

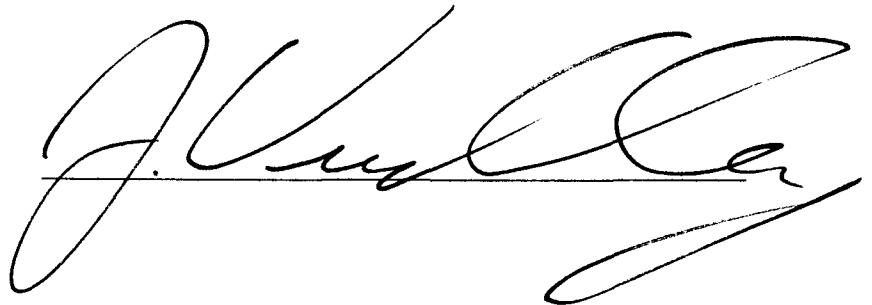
Outlet Book Co., Inc.  
419 Park Avenue South  
New York, NY 10016

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  
4th day of April, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Outlet Book Co., Inc. :  
for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
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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 4th day of April, 1980, he served the within notice of Determination by mail upon Wilfred Wyler 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. Wilfred Wyler  
Wilfred Wyler & Company  
200 Park 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  
4th day of April, 1980.

Joanne Knapp

J. Vredenburg

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

April 4, 1980

Outlet Book Co., Inc.  
419 Park Avenue South  
New York, NY 10016

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  
Wilfred Wyler  
Wilfred Wyler & Company  
200 Park Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Crown Publishers, 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 9/1/70 - 8/31/73. :

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 4th day of April, 1980, he served the within notice of Determination by mail upon Crown Publishers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

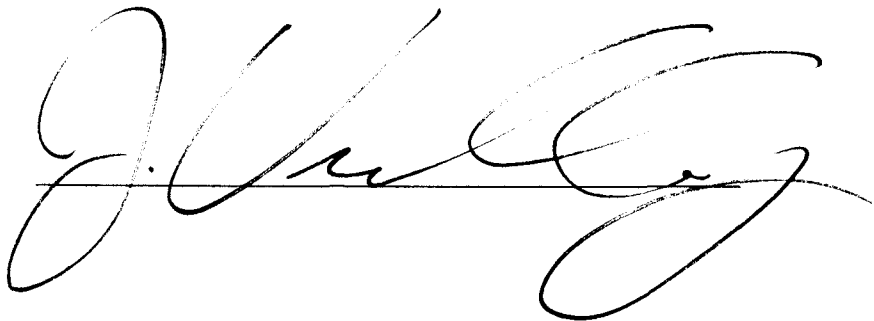
Crown Publishers, Inc.  
419 Park Ave. S.  
New York, NY 10016

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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  
4th day of April, 1980.

Jeanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Crown Publishers, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
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AFFIDAVIT OF MAILING

State of New York  
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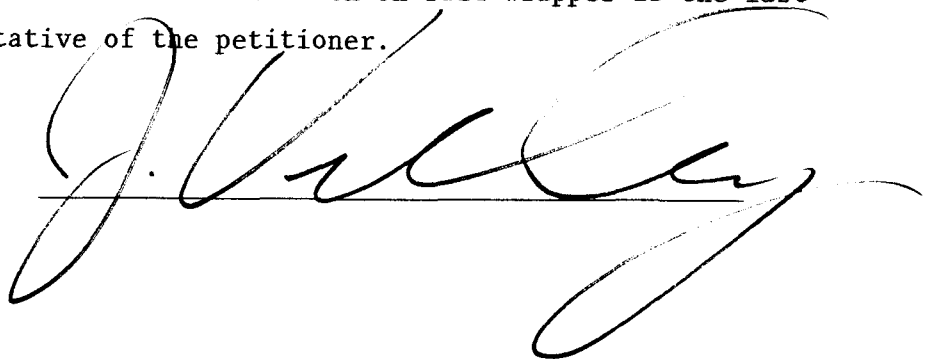
Mr. Wilfred Wyler  
Wilfred Wyler & Co., CPA's  
200 Park Ave.  
New York, NY 10017

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Sworn to before me this  
4th day of April, 1980.

Joanne Knapp



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

April 4, 1980

Crown Publishers, Inc.  
419 Park Ave. S.  
New York, NY 10016

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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  
Wilfred Wyler  
Wilfred Wyler & Co., CPA's  
200 Park Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application

of

OUTLET BOOK CO., INC.

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, 1970 through  
February 28, 1973.

DETERMINATION

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In the Matter of the Application

of

CROWN PUBLISHERS, INC.

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, 1970 through  
August 31, 1973.

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Applicant, Outlet Book Co., Inc., 419 Park Avenue South, New York, New York 10016, 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, 1970 through February 28, 1973 (File No. 10254).

Applicant, Crown Publishers, Inc., 419 Park Avenue South, New York, New York 10016, 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, 1970 through August 31, 1973 (File No. 10081).

A joint formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1978 at 1:15 P.M. Applicants appeared by Wilferd Wyler, CPA. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

- I. Whether the rental of mailing lists in the form of gummed, pre-addressed labels for use on advertising brochures is subject to sales or use tax.
- II. Whether there should be an allocation of the tax imposed on the user of these addressed labels dependent on the point of destination of the advertising brochures to which they are attached.

FINDINGS OF FACT

1. Applicants, Outlet Book Co., Inc. and Crown Publishers, Inc., filed New York State and local sales and use tax returns for the periods at issue. Applicants executed consents extending the period of limitation for assessment pertaining to the periods at issue to September 19, 1974.
2. On September 4, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Outlet Book Co., Inc. for the periods ended May 31, 1970 through February 28, 1973 in the amount of \$47,909.71 in tax, plus \$17,165.79 penalty and interest. On December 10, 1974, the Bureau issued a Notice of Assessment Review reducing the assessment to \$43,655.65 in tax, plus interest computed to December 20, 1974 of \$16,557.55.  
  
On September 4, 1974 the Sales Tax Bureau also issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Crown Publishers, Inc. and Nathan Wartels, individually and as officer, for the periods ended November 30, 1970 through August 31, 1973 in the amount of \$27,852.60 in tax plus \$8,144.82 penalty and interest. On December 10, 1974 the Bureau issued a Notice of Assessment Review reducing the assessment to \$22,774.76 in tax, plus interest computed to December 20, 1974 of \$7,347.89.
3. Both applicants timely filed an application for a hearing to review determinations and demands for sales tax found due by the Sales Tax Bureau, dated November 27, 1974. These applications were assigned for joint hearings



thereon, involving the same issues of fact and law.

4. Applicants are book publishers who have had occasion to mail catalogues advertising their publications to potential customers, both inside and outside the State. For this purpose, mailing lists in the form of pre-addressed gummed labels, were rented from a list owner. The labels were to be attached to said catalogues for mailing. Applicants, as the "users" of said labels, had restricted use of the "lists" on a limited, one-time basis, and were not allowed to copy or otherwise utilize these lists except for this one mailing.

5. Applicants concede that the rental of the mailing lists is subject to sales or use tax and that they are liable for the payment thereof. They contend, however, that the cost of the labels used for mailing catalogues outside of New York State is not subject to sales or use tax.

6. The Sales Tax Bureau has historically treated advertising materials as qualifying for credit or refund under section 1119(a) of the Tax Law (property purchased in bulk and not used within the State, but shipped to a point outside the State and used outside the State). A letter dated January 17, 1967 issued by the Instructions and Interpretations Unit of the Sales Tax Bureau (although not addressed to applicants herein) provided as follows:

"Please be advised that the list house selling pre-addressed labels and envelopes to a customer, which are delivered to a mailing house, and with knowledge of the ultimate destination of such labels and envelopes, should impose sales tax on that portion of the selling price which relates to addresses within New York State.

If 90% of the addresses are outside New York State, only 10% of the selling price would be taxable."

#### CONCLUSIONS OF LAW

A. That the rental of mailing lists in the form of pre-addressed labels from a list owner by a list user constitutes the sale of tangible personal property under section 1105(a) of the Tax Law and/or an information service

under section 1105(c)(1) of the Tax Law (Alan Drey Company, Inc. v. State Tax Commission (67 A.D.2d 1055)).

B. That under section 1119(a)(2) of the Tax Law, a refund or credit shall be allowed for sales or use tax paid on the sale or use of tangible personal property purchased in bulk, or any portion thereof, which is stored and not used by the purchaser or user within New York if such property is subsequently reshipped by such purchaser or user to a point outside this State for use outside this State. Although the Sales Tax Bureau has treated advertising materials as qualifying under this section, the labels at issue here do not so qualify and are subject to sales or use tax in New York State. No allocation is permissible.

C. That in any event, the credit or refund set forth in section 1119(a)(2) of the Tax Law would not be available against tax on an information service.

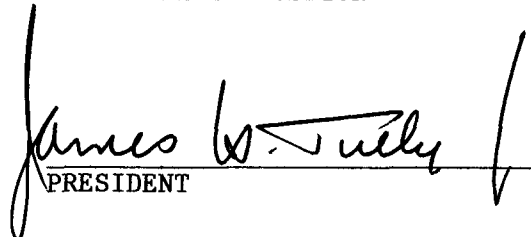
D. That the transactions at issue do not involve an advertising service which would be excluded from taxation under section 1105(c)(1) of the Tax Law.


E. That the applications of Outlet Book Co., Inc. and Crown Publishers, Inc. are in all respects denied and the notices of determination and demand for sales and use taxes due, as adjusted, are sustained.


DATED: Albany, New York

APR 4 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER