

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Ace Advertisers Services, Inc. :

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 3/1/70-2/28/73. :

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 9th day of January, 1981, he served the within notice of Determination by mail upon Ace Advertisers Services, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ace Advertisers Services, Inc.
200 Hudson Street
New York, NY 10013

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
9th day of January, 1981.

Cornelius A. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Ace Advertisers Services, Inc. :

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 3/1/70-2/28/73. :

State of New York
County of Albany

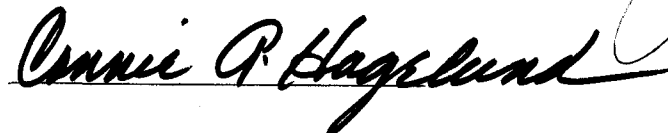
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of January, 1981, he served the within notice of Determination by mail upon Jules M. Fields the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

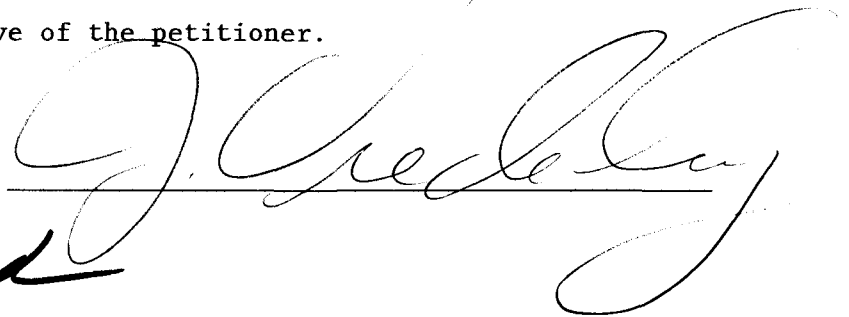
Esq. Jules M. Fields
175 Main Street
White Plains, NY 10601

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
9th day of January, 1981.


Connie R. Haglund



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

January 9, 1981

Ace Advertisers Services, Inc.
200 Hudson Street
New York, NY 10013

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
Jules M. Fields
175 Main Street
White Plains, NY 10601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
ACE ADVERTISERS SERVICES, INC. : 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 March 1, 1970 through February 28, :
1973. :
:

Applicant, Ace Advertisers Services, Inc., 200 Hudson Street, New York, New York 10013, 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. 11438).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 6, 1977 at 10:45 A.M. Applicant appeared by Jules M. Fields. The Audit Division appeared by Peter J. Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether purchases of tangible personal property and services by applicant constituted purchases for resale to applicant's customers.

FINDINGS OF FACT

1. On June 18, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Ace Advertisers Services, Inc. (hereinafter "Ace"), alleging taxes due of \$10,849.31, plus penalty and interest of \$5,091.39, for a total due of \$15,940.70 for the period March 1, 1970 through February 28, 1973. Ace consented to extend the period of limitation for assessment of sales and use taxes to June 20, 1975.

2. At the hearing held on December 6, 1977, it was agreed between the parties that the alleged taxes due should be reduced to \$5,314.63 which amount is at issue.

3. During the period at issue Ace was a creative lithographer and a printer and mailer offering its services principally to advertisers. Applicant's activities included consultation, research, creative art, composition, mechanicals, and also production or processing by lithograph, letterpress or lettershop departments.

4. On audit, the Audit Division determined that applicant had failed to pay a sales or use tax on purchases of artwork, mechanicals, film, color separation, composition, art supplies and addressograph plates which items were used by Ace in performing the aforesaid activities. The applicant did not bill separately but rather included the cost of said items in the total invoice price to the customer. The Audit Division assessed tax at the appropriate New York State and/or New York City rate. The Division also assessed tax on the purchase of a fixed asset, however, this portion of the assessment is not at issue.

5. It was the position of Ace that the above items were purchased for resale to its customers. Ace contended that a separate billing for said items was not a necessary requirement for finding that a purchase was made for resale. Ace presented a purchase order which indicated that all artwork, mechanicals and film plates were to remain property of the customer.

6. It was the Audit Division's position that a purchase can be for resale only if the customer is separately billed for each item.

7. Ace acted in good faith at all times.

CONCLUSIONS OF LAW

A. That the purchases of artwork, mechanicals, film, color separations, composition, art supplies and addressograph plates by applicant, Ace Advertisers

Services, Inc., were purchases of tangible personal property and services for use by applicant in its various activities; therefore, they were not purchases for resale within the meaning and intent of section 1101(b)(4) of the Tax Law (Matter of Baronet Lithograph Co., State Tax Commission, August 25, 1978).

B. That the Audit Division erroneously determined artwork and composition to be subject to the New York State sales or use tax; that artwork and composition are production equipment exempt from the New York State sales or use tax; that the amount of tax due is hereby reduced to \$3,337.80 (the 3 percent New York City rate only).

C. That the penalties and interest above the minimum statutory rate are cancelled.

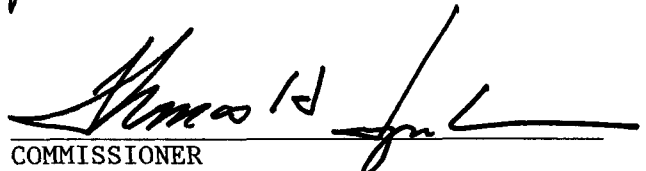
D. That the application of Ace Advertisers Services, Inc. is granted to the extent indicated in Conclusions of Law "B" and "C" above; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 18, 1975; and that, except as so granted, the application is in all other respects denied.


DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER