

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
American Bank Stationery Co. :

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 9/1/68 - 8/31/71. :

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 5th day of February, 1981, he served the within notice of Decision by mail upon American Bank Stationery Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

American Bank Stationery Co.
7501 Pulaski Hgwy.
Baltimore, MD

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
5th day of February, 1981.

Conrad P. Hugelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
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for the Period 9/1/68 - 8/31/71. :

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 5th day of February, 1981, he served the within notice of Decision by mail upon Joseph H. Murphy 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. Joseph H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
1 Mony Plaza
Syracuse, NY 13202

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
5th day of February, 1981.

Constance P. Haglund

J. Vredenburg

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

February 5, 1981

American Bank Stationery Co.
7501 Pulaski Hgwy.
Baltimore, MD

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
Joseph H. Murphy
Hancock, Estabrook, Ryan, Shove & Hust
1 Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AMERICAN BANK STATIONERY COMPANY	:	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 September 1, 1968 through	:	
August 31, 1971.	:	

Petitioner, American Bank Stationery Company, 7501 Pulaski Highway, Baltimore, Maryland 21206, 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 September 1, 1968 through August 31, 1971 (File No. 00248).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on August 11, 1977 at 9:15 A.M. Applicant appeared by Hancock, Estabrook, Ryan, Shove & Hust (Joseph H. Murphy, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the sales of checks, deposit slips and checkbook covers, manufactured by petitioner upon orders from its customer banks, which items are personalized for depositors of such banks and mailed directly by petitioner to such depositors, constituted sales to the banks for resale to their depositors.

II. Whether delivery charges for shipping personalized checks, deposit slips and checkbooks to the banks' depositors were exempt from sales tax.

III. Whether the utilization by the Audit Division of a one-week test period in calculating the determination of sales and use taxes due was proper.

IV. Whether penalties or interest in excess of the statutory rate should be abated on any sales or use tax for which applicant may be found liable.

FINDINGS OF FACT

1. Petitioner, American Bank Stationery Company, is a financial printer with two manufacturing plants in New York State at Liverpool and at Hicksville. Its offices and principal manufacturing plant are in Baltimore, Maryland.

2. On November 30, 1971, petitioner executed a consent to the extension of the period of limitation for assessment of sales and use taxes for the period September 1, 1968 through February 28, 1969 to June 20, 1972.

3. On April 5, 1972, pursuant to an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner assessing additional tax of \$36,310.48, plus penalty and interest of \$8,029.15, for a total of \$44,339.63, for the period September 1, 1968 through August 31, 1971.

4. On June 15, 1972, petitioner filed an application for revision of the determination of the deficiencies in sales and use taxes.

5. By letter dated December 18, 1974, the Audit Division amended the notice of determination issued April 5, 1972 to reflect additional tax of \$35,185.11, plus penalty and interest. The amount of the amended notice at issue at this hearing is \$33,917.28 in additional tax, plus penalty and interest.

6. During the period under review, petitioner manufactured personalized checks, checkbooks and deposit slips for national and state banks. It solicited the orders through salesmen who called upon the banks.

7. A bank furnished a depositor opening a checking account with a new account kit, containing a temporary supply of checks and an order form for personalized checks, checkbooks and deposit slips. The depositor, after selection of a color and design from a catalog offered by the bank, left his or her completed order form with the bank.

The bank accumulated the depositors' order forms until it decided to which of the fifty or sixty check manufacturers to send the batched-up orders. The depositor did not select the manufacturer. On a reorder, the bank again selected the printer without reference to the depositor. Depositors took up any complaints about their checks with their banks.

8. Petitioner, upon receipt of a batch of orders sent by a national or state bank, printed the checks, etc. and mailed them directly to the depositors.

9. Petitioner invoiced the bank for the orders and attached thereto a series of debit tickets to account for each order.

10. Petitioner's imprinted price schedule stated "All prices plus delivery unless indicated otherwise." The schedule indicated that for pocket style checks the imprinted price included delivery charges.

11. Petitioner's invoices included columns headed - number of orders, style number, base unit price, unit delivery charge, unit sales tax, total unit price, and total. Petitioner recorded an entry in each column for sales other than sales of pocket style checks where the column "unit delivery charge" was left blank.

12. Petitioner charged New York State and local sales and use taxes on its sales. The tax on sales of pocket style checks was computed on the base unit price exclusive of the unit delivery charge.

13. On audit, the Audit Division's examiners considered the delivery charge for pocket style checks as subject to New York State and local sales and use taxes. The examiners examined microfilms of petitioner's sales invoices in detail for the one test week beginning March 4, 1970. Based on this week, the examiners calculated the total tax that should have been due for the gross amount of sales shown. From this total was subtracted the sales tax actually collected. The difference was additional tax due. This was divided by the tax actually reported, from which a percentage developed. This percentage was then projected against the tax reported for the thirty-six month period of the audit, and the additional tax due of \$33,917.28 was extrapolated.

14. Petitioner maintained adequate books and records from which the actual amount of petitioner's tax liability could be determined.

15. Petitioner relied in good faith on the interpretation of the Tax Law given by its attorneys.

CONCLUSIONS OF LAW

A. That petitioner failed to show that the debit tickets it issued had been used by the banks as a source document to charge the depositors for the printing or that exemption certificates had been issued by the banks, as required by section 1132(c) of the Tax Law, indicating a sale for resale. That therefore the sales of personalized checks, checkbook covers and deposit slips by petitioner were taxable retail sales under section 1101(b)(4) and section 1105(a) of the Tax Law.

B. That delivery charges included in the total price charged banks by petitioner for pocket-style checks were not separately stated in the written contract or on the bill rendered to the customer, as required for excluding from sales tax according to section 1101(b)(3) of the Tax Law.

The failure of petitioner to include amounts charged as delivery charges in the base price for computation of sales taxes due caused under-calculation and under-payment of sales taxes in the period under review.

C. That use of a one-week test period to determine sales tax liability over a period of three years, when petitioner's sales invoices for the entire period under review were available for examination, was improper. "[R]esort to this method of computing tax liability must be founded upon an insufficiency of record keeping which makes it virtually impossible to verify taxable sales receipts and conduct a complete audit." Chartair, Inc. v. State Tax Commission, 65 A.D.2d 44, 46 (3rd Dept. 1978). Names in the News, Inc. v. State Tax Commission, 429 N.Y.S.2d 755 (3d Dept. 1980); Mohawk Airlines v. Tully, 429 N.Y.S.2d 759 (3d Dept. 1980); Matter of American Whipped Products, Inc., State Tax Commission, July 7, 1980. Consequently, only that portion of the assessment based on an actual audit of petitioner's invoices can be sustained. The portion based on the one-week test is cancelled.

D. That section 1145(a) of the Tax Law provides that if the delay in filing or paying over any tax found to be due is found to be excusable by the Tax Commission, it may remit any or all penalties, and interest above the legal minimum. Accordingly, any penalty and/or interest in excess of the statutory minimum is hereby cancelled.

E. That the petition of American Bank Stationery Company is granted to the extent indicated in Conclusions of Law "C" and "D"; that the notice of determination issued April 5, 1972 as amended on December 18, 1974 is to be modified accordingly; and that except as so modified, the determination is sustained.

DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER