

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Eagle Affiliates, 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:
12/1/72-11/30/75.

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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Eagle Affiliates, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eagle Affiliates, Inc.
101-01 Ave. D
Brooklyn, NY 11236

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
6th day of November, 1981.

Christie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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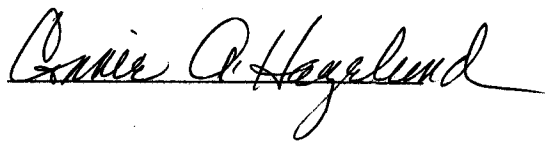
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of November, 1981, he served the within notice of Decision by certified mail upon Peter W. Schmidt the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

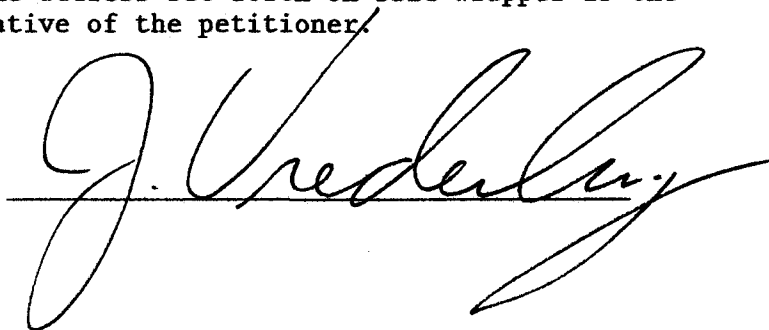
Peter W. Schmidt
Willkie, Farr & Gallagher
153 E. 53rd St.
New York, NY 10022

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
6th day of November, 1981.





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

November 6, 1981

Eagle Affiliates, Inc.
101-01 Ave. D
Brooklyn, NY 11236

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 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
Peter W. Schmidt
Willkie, Farr & Gallagher
153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EAGLE AFFILIATES, INC.	:	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 December 1, 1972	:	
through November 30, 1975.	:	

Petitioner, Eagle Affiliates, Inc., 101-01 Avenue D, Brooklyn, New York 11236, 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 December 1, 1972 through November 30, 1975 (File No. 19748).

A formal hearing was held before Melvin S. Barasch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1979. Petitioner appeared by Willkie, Farr and Gallagher, Esqs. (Peter W. Schmidt and Deborah Linfield, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre and Irving Atkins, Esqs., of counsel).

ISSUES

I. Whether certain molds were used in New York and were purchases subject to tax.

II. Whether a 4-color offset printing machine was used in New York and was a taxable purchase.

III. Whether the transfers of assets to petitioner by four affiliated corporations were excluded from the definition of retail sale and therefore not subject to tax.

FINDINGS OF FACT

1. On or about February 17, 1976, petitioner, Eagle Affiliates, Inc., executed a consent extending the period for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law for the taxable periods December 1, 1972 through November 30, 1975 to December 20, 1976. A further consent to extend the period within which to issue an assessment for the taxable period December 1, 1972 through November 30, 1975 at any time on or before December 20, 1977 was executed by the petitioner on or about September 24, 1976.

2. On May 11, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the taxable period December 1, 1972 through November 30, 1975 in the amount of \$67,374.23, plus penalty and interest of \$37,207.67, for a total of \$104,561.90. Petitioner timely filed a petition to review said determination.

3. The determination was based on a field audit of the books and records of petitioner. It was determined that the following items were taxable:

- (a) Sales to employees -- \$18,041.
- (b) Vehicle rental income from related companies -- \$120,803.
- (c) Purchases subject to use tax:
 - (1) Stationery and printing supplies -- \$54,584.00.
 - (2) Outer cartons -- \$134,408.00.
 - (3) Factory supplies - \$327.00
 - (4) Purchases of production molds (\$640,361.00) alleged to have been used in New York City.
 - (5) Other production assets of \$13,331.
 - (6) Production assets transferred by affiliated corporations to petitioner in the amount of \$334,115.00.
 - (7) Non-production assets of \$137,002.00. Included in this amount is \$35,000 for the purchase of a four-color offset printing machine, and \$48,492.00 of assets transferred to petitioner by affiliated corporations.

4. The Audit Division concedes that no sales or use tax is due on the following items:

- (a) Vehicle rentals -- \$120,803.
- (b) That purchases of corrugated cartons to the extent of \$132,181 are not taxable.
- (c) Purchases of stationery and printing supplies used exclusively outside State of New York in the amount of \$54,584.
- (d) Of previously assessed fixed assets \$86,768.91 were deemed to be exempt from tax.
- (e) Molds not yet in production in the amount of \$30,781.86 were deemed non-taxable.
- (f) Purchase price of mold not used in New York in the amount of \$895.00.
- (g) Labor performed by employees in New Jersey capitalized in the amount of \$68,662.00.
- (h) Moldmakers' wages capitalized in the amount of \$5,703.00.

5. Petitioner concedes liability for taxable sales of \$18,041.00 to employees, \$2,327.00 of purchases of corrugated containers and \$327.00 of factory supplies, \$16,183 of production molds, \$13,331 of other production assets and \$53,510 of non-production assets.

6. Eagle Affiliates, Inc. is engaged in the manufacture and sale of plastic houseware products, including the "Superseal" line and various items decorated with "Disney" characters. Eagle, during the tax period in issue, maintained general offices at 101-01 Avenue D, Brooklyn, New York, where it kept its books and records. Its manufacturing plant was and still is located in Harrison, New Jersey. Petitioner produces its plastic products by the use of special machines through a process known as injection molding. It requires a special type of mold. Injection molding is a one-step manufacturing process whereby pellets of plastic resin are melted down and fed under pressure through a plasticizing screw into a mold cavity. The plastic cures in the mold in the form of the desired product as dictated by the mold. Independent molders also produce plastic products for the petitioner by "injection molding".

7. None of the molds were manufactured for the petitioner in New York. Many of the molds used by the petitioner's injection molding machines during the audit period in issue were manufactured in Portugal and delivered to

petitioner at its Harrison, New Jersey facility for testing and then used by petitioner on its machines in New Jersey or sent to an independent molder. The same is true of molds which were manufactured out of state. The molds could not be used on machines that Admiral, a sister corporation of Eagle at the same premises in Brooklyn, had because those were injection blow molding machines. During the audit period all the independent molders who received Eagle molds and used them to produce Eagle products were located outside the City of New York with one exception, Randel Plastics Co., located in Long Island City, County of Queens, City of New York. The amount involved as conceded by petitioner at the hearing was \$16,183.00. The charge for a mold for an ice cream machine was from a company in Akron, Ohio, which manufactured the machines for the petitioner, and retained the mold; the mold was never shipped to Brooklyn. All invoices for molds were sent to Brooklyn.

8. The Harrison, New Jersey plant was opened in May, 1973. Prior to that time, the molds were tested by the petitioner in Brooklyn before being sent to contract molders.

9. In September 1975, petitioner purchased a new 4-color offset printing machine for \$35,000.00. The machine was delivered to Harrison, New Jersey for testing and for operation. This machine was never used in the State of New York. Transfer of title to this machine never took place in the State of New York.

10. Prior to March 31, 1973 APL Corporation owned 100 percent of the shares of stock of Winston Housewares Corporation, Glorbet Novelties Corporation, Wonder Industries Corporation and Admiral Housewares Corporation, all located in New York City. On March 31, 1973 a plan of reorganization was filed under Section 368(a)(1)(D) of the Internal Revenue Code. The four aforementioned corporations

were liquidated and their assets were transferred to Eagle Affiliates, Inc. The four corporations transferred to Eagle \$334,115.00 in production assets and \$48,492.00 in non-production assets. Under the plan, stock was to be issued by Eagle to the other subsidiaries; in fact stock was not issued.

11. Petitioner has failed to present proof that reasonable cause exists for failure to properly report and pay over any tax within the time required. Although petitioner concedes that a portion of the tax assessed is due and payable, it has made no effort to pay same.

CONCLUSIONS OF LAW

A. That certain molds in dispute were not used in the City of New York except to the extent indicated in Finding of Fact "7", supra. The testing of molds in Brooklyn prior to their being sent to contractors, before the Harrison plan was opened as indicated in Finding of Fact "8" was a taxable use of any molds so tested.

B. That no sales or use tax was due on the 4-color offset printing machine described in Finding of Fact "9", supra.

C. That the transfer of assets to petitioner by four affiliated corporations is not excluded from the definition of "retail sale" within the intent and meaning of section 1101(b)(4)(ii)(A) or (B). Section 1101(b)(5) includes in the definition of sale any transfer of title for a consideration, or any agreement therefor. The consideration for the transfer was the agreement to issue stock.

D. That petitioner has failed to establish that reasonable cause exists for the waiver of penalties and interest.

E. That the Audit Division is directed to recompute the tax, penalties and interest in accordance with Findings of Fact "4" and "5" and Conclusions of Law "A" and "B".

F. That the petition of Eagle Affiliates, Inc. is granted to the extent indicated in Conclusion of Law "E" and denied in all other respects.

DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER