

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Farm Journal, 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 8/1/65 - 11/30/76. :

State of New York
County of Albany

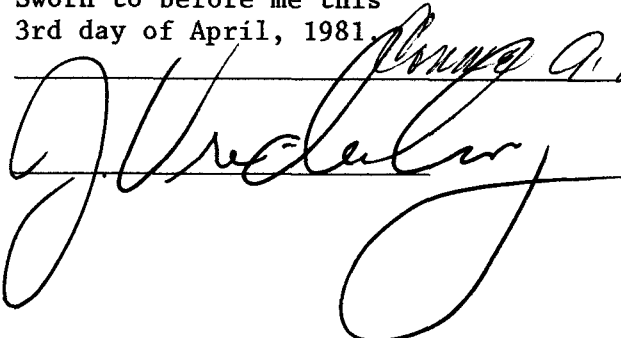

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of April, 1981, he served the within notice of Decision by mail upon Farm Journal, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Farm Journal, Inc.
West Washington Sq.
Philadelphia, PA 19105

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
3rd day of April, 1981.

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Farm Journal, Inc. :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
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for the Period 8/1/65 - 11/30/76. :

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 3rd day of April, 1981 he served the within notice of Decision by certified mail upon George J. Noumair 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. George J. Noumair
Whitman & Ransom
522 Fifth Ave.
New York, NY 10036

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
3rd Day of April, 1981.

Carrie A. Hagelund

J. Vredenburg

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

April 3, 1981

Farm Journal, Inc.
West Washington Sq.
Philadelphia, PA 19105

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
George J. Noumair
Whitman & Ransom
522 Fifth Ave.
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FARM JOURNAL, INC.	:	DECISION
	:	
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 August 1, 1965 through	:	
November 30, 1976.	:	

Petitioner, Farm Journal, Inc., West Washington Square, Philadelphia, Pennsylvania 19105, 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 August 1, 1965 through November 30, 1976 (File No. 18548).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 26, 1979 at 9:15 A.M. Petitioner appeared by Whitman & Ransom, Esqs. (George J. Noumair and Michael T. Kiesel, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether Farm Journal is a periodical within the meaning of section 1115(a)(5) of the Tax Law.

FINDINGS OF FACT

1. The Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated March 31, 1977 covering the periods ending August 31, 1965 through November 30, 1976, which assessed a deficiency of \$38,151.73, plus penalty and/or interest of \$27,774.80, totalling \$65,926.53. This deficiency was assessed on the theory that the petitioner's publication

did not qualify for a sales tax exemption as a "periodical" solely because it was not available to the public.

2. Petitioner is a Pennsylvania corporation engaged in the business of publishing the magazine Farm Journal.

3. Farm Journal is published at stated intervals during the year, to wit: monthly, except that there is a single issue for June-July and two issues per month in February and March.

4. Farm Journal features a variety of articles by different authors.

5. Farm Journal has continuity of title and the nature of its editorial content, which relates to farming.

6. Farm Journal is published out of Philadelphia, Pennsylvania, printed in Chicago, Illinois and mailed to subscribers across the United States.

7. Farm Journal is sold exclusively by subscription.

8. Farm Journal has an average per issue circulation of 1,800,00 copies.

9. During the tax periods in question, the masthead of Farm Journal stated:

"It is of service to families who own or operate farms/ranches, producing one of the major crops or livestock (corn, wheat, sorghum, cotton, soy beans, hog, beef and dairy). Type of farming operation is required on all subscription orders. Publisher reserves the right to refuse any subscription."

10. Farm Journal is directed at a market of 2,700,000 farms and 14,000,000 people, of which 55,000 farms and 95,000 people are in the State of New York.

11. Approximately 120,000 people who are not actively engaged in farming receive Farm Journal.

12. Petitioner prefers subscribers who are farmers because its circulation statistics are thereby of greater value in attracting advertisers whose products are sold to farmers. Petitioner does not deny access to Farm Journal to non-farmers.

CONCLUSIONS OF LAW

A. That section 1115(a)(5) of the Tax Law provides that receipts from newspapers and periodicals are exempt from sales and use tax.

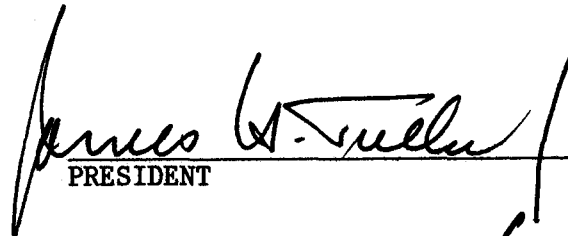
B. That Farm Journal is a periodical within the meaning of section 1115(a)(5) of the Tax Law. (Matter of Business Statistics Organization v. Joseph, 299 N.Y. 443; Matter of G & B Publishing Co. Inc. v. Department of Taxation and Finance, 57 A.D.2d 18.) Farm Journal is available to the "general public" in the sense required by Matter of Business Statistics Organization v. Joseph, supra, since any member of the public may subscribe to it and the publication is not confidential in nature. Farm Journal's masthead was not intended nor was it effective to prevent free dissemination of the material contained therein, but was rather intended to have promotional and advertising value in stimulating sales of subscriptions and advertising space.

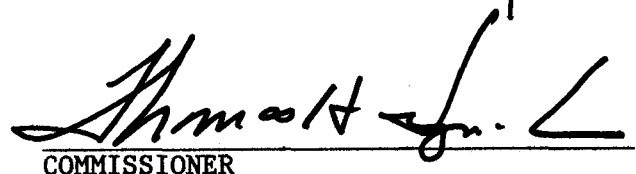
C. That the petition of Farm Journal, Inc. is granted in all respects, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is cancelled.

DATED: Albany, New York

APR 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER