

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Franklin Mint Corporation :
formerly General Numismatics Corp. :
: 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 :
Periods 9/1/73 - 2/28/75. :

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 19th day of June, 1981, he served the within notice of Decision by mail upon Franklin Mint Corporation, formerly General Numismatics Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Franklin Mint Corporation
formerly General Numismatics Corp.
Franklin Center, PA 19063

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
19th day of June, 1981.

Annie P. Haydel

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Franklin Mint Corporation :
formerly General Numismatics Corp. :

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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 19th day of June, 1981, he served the within notice of Decision by mail upon P.J. DeQuinzio 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. P.J. DeQuinzio
Deckert, Price & Rhoads
3400 Centre Sq. West, 1500 Market St.
Philadelphia, PA 19102

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
19th day of June, 1981.

Connie A. Hagelind

J. Vredenburg

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

June 19, 1981

Franklin Mint Corporation
formerly General Numismatics Corp.
Franklin Center, PA 19063

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
P.J. DeQuinzio
Deckert, Price & Rhoads
3400 Centre Sq. West, 1500 Market St.
Philadelphia, PA 19102
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|---|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| FRANKLIN MINT CORPORATION | : | DECISION |
| formerly GENERAL NUMISMATICS CORP. | : | |
| | : | |
| for Revision of a Determination or for Refund | : | |
| of Sales and Use Taxes under Articles 28 and 29 | : | |
| of the Tax Law for the Periods September 1, | : | |
| 1973 through February 28, 1975. | : | |

Petitioner, Franklin Mint Corporation, formerly General Numismatics Corp., Franklin Center, Pennsylvania 19063, 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 periods September 1, 1973 through February 28, 1975 (File No. 17608).

A formal hearing was held before Louis M. Klein, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York on August 10, 1977. Petitioner appeared by Dechert, Price & Rhoads, Esqs. (P.J. DiQuinzio, Esq. and John H. Enos, III, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., and Harry Kadish, Esq., of counsel).

ISSUES

- I. Whether petitioner was a vendor prior to December 16, 1974.
- II. Whether petitioner as a voluntary vendor, was subject to the provisions of the Sales Tax Law applicable to vendors.
- III. Whether petitioner was obligated to collect local sales taxes.
- IV. Whether the assessment against petitioner, as based on sections 1101, 1133, and 1210 of the Tax Law, is unconstitutional as violative of petitioner's

right to due process of law and as imposing an undue burden on interstate commerce.

FINDINGS OF FACT

1. On December 17, 1976, the Audit Division of the Department of Taxation and Finance of the State of New York issued a notice of determination against petitioner as Franklin Mint, Inc. (sic) for the periods September 1, 1973 through February 28, 1975 in the amount of \$225,866.33 plus penalty and interest of \$121,709.37 for a total of \$347,575.70 based upon a field audit covering the period September 1, 1973 through August 31, 1976. No deficiency was found for the period March 1, 1975 through August 31, 1976. Petitioner timely filed a protest, which is considered a petition, with respect to the notice of determination.

2. Franklin Mint Corporation, formerly General Numismatics Corp., (hereafter sometimes referred to as "Franklin Mint"), is a private corporation having no connection with The United States Mint. Prior to December 16, 1974, Franklin Mint was engaged in the manufacture of coins and medals and other collectibles which it sold principally through a mail order operation. It maintained offices at Franklin Center, Pennsylvania. It also maintained a small retail gift outlet on its premises.

3. On or about June 4, 1970, petitioner, as The Franklin Mint, Inc. (sic), was granted a Certificate of Authority to collect New York State sales and use taxes under Articles 28 and 29 of the Tax Law and began remitting to New York State the sales tax on its mail order sales to New York residents, which it had begun collecting on May 1, 1970 on a voluntary basis. The corporation was granted Registration # 23-1647880 by the Sales Tax Bureau.

4. Franklin Mint on its application for a Certificate of Authority to collect sales tax indicated that it was engaged in the business of the manu-

facture and sale of coins and medals. The petition states in part, that "As of May 1, 1970, petitioner began requesting residents of New York, which it solicited by direct mail and media advertising, to remit applicable sales and use taxes on their purchases. It notified its customers that all such orders will be received by applicant at its place of business in, and if accepted, will be filled by mail from Franklin Center, Pennsylvania".

5. On July 22, 1964 a Certificate of Incorporation was issued by the State of Pennsylvania to a corporation entitled "'General Numismatics Corporation' now 'Franklin Mint Corporation'". There was submitted into evidence a copy of a certificate of the Secretary of the Commonwealth of Pennsylvania, dated November 21, 1974, which stated, in part, that "...no proceedings in dissolution adversely affecting the corporate existence of the foregoing have been subsequently filed. ...it appears that this corporation remains a presently subsisting corporation as of the date hereof."

6. On December 9, 1974, The Franklin Mint Corporation filed with the New York State Department of State, Division of Corporations, a certificate of Surrender of Authority under section 1310 of the Business Corporation Law which indicated that said corporation was organized under the laws of the State of Delaware; that said corporation was authorized to do business in the State of New York on October 31, 1969; that the corporation surrendered its authority to do business in the State of New York and revoked the authority of C T Corporation System, its registered agent and consented that process against it in any action or proceeding based upon liability or obligation by it before the filing of the certificate of surrender could be served on the Secretary of State of New York after the filing thereof in accordance with section 306(b) of the New York Business Corporation Law; that the post office address to which the Secretary of State was to mail a copy of any process against the

corporation served upon him is 100 West Tenth Street, Room 1200, Wilmington, Delaware 19801.

7. On December 9, 1974 Franklin Mint Corporation applied for authority to transact business in the State of New York pursuant to section 1302 of the New York Business Corporation Law. It was stated on the application that Franklin Mint Corporation was incorporated under the laws of Pennsylvania on July 22, 1964. The business the corporation proposed to carry on within the State of New York as specified in the application is as follows: "To engage in the manufacture, processing, research and development, distribution and sale of all kinds of coins, medals, numismatic objects and other collector items and all activities and business relating thereto." The application further stated that the office of the corporation was to be located in the City of New York, County and State of New York; the address to which the Secretary of State was to mail a copy of process against the corporation served upon him was Franklin Mint Corporation, c/o Vice President, 601 West 26th Street, New York, New York, 10001.

8. On August 18, 1977, Franklin Mint by Gerald C. Dragonetto, Vice President executed a power of attorney authorizing P.J. Quinzio, Esq. and John H. Enos, Esq. both of the firm of Dechert, Price & Rhoads, Esqs., its attorneys in fact to to represent it with respect to sales and use taxes allegedly due for the period September 1, 1973 to and including August 31, 1976.

9. There was introduced into evidence copies of the franchise tax returns of The Franklin Mint Corporation for the years 1970 through December 9, 1974 showing its address as "277 Park Avenue, New York, New York 10017". Thereon the State or County of Incorporation was designated "Delaware".

10. On December 19, 1972, Franklin Mint Corporation purchased all of the issued and outstanding common stock of Sloves Mechanical Bindings Company a

New York corporation with its principal place of business at 601 West 26th Street New York, New York. Sloves was a supplier of packaging to Franklin Mint. Sloves continued to operate as Franklin Mint's wholly-owned subsidiary with no changes in its operations, business, management or employees. On December 13, 1974, a certificate of merger of Sloves into Franklin Mint was filed with the New York Department of State, and Sloves was merged into Franklin Mint on December 16, 1974. Beginning on December 16, 1974, Franklin Mint in addition to continuing its prior business, also operated the business previously conducted by Sloves.

11. Franklin Mint collected New York State and the New York City sales taxes but prior to December 16, 1974, it made no attempt at collecting local taxes other than New York City's.

12. During the tax periods in issue Franklin Mint solicited orders from customers located in the State of New York through direct mail or advertising in newspapers and periodicals located within New York State.

13. Franklin Mint in 1964 manufactured medallions and other promotional items. In 1969 it started producing commemorative coins. The product line has now been expanded to include pewterware, stamps, silver plates and related items.

14. Exhibit "G" attached to and made a part of petitioner's Exhibit "C" (admitted into evidence) is a form letter in response to inquiries of petitioner's customers about the New York State local tax charge. The aforesaid letter used after December 16, 1974 provides, in part, that: "The Franklin Mint has offices in New York. Because of their location, our tax consultants advised us we are obligated to charge both state and local taxes in New York."

15. At the hearing, petitioner's representative conceded that the petitioner is "Franklin Mint Corporation", a Pennsylvania corporation and that it is the parent of "The Franklin Mint Corporation", a Delaware corporation.

16. The petitioner contends that The Franklin Mint Corporation, the corporation organized under the laws of Delaware, was merely a device to preserve the name Franklin Mint in every jurisdiction in the United States. It was never an operating company and never operated anywhere; that the taxpayer is Franklin Mint Corporation, a Pennsylvania corporation and that the latter did not transact any business within New York prior to December 16, 1974.

CONCLUSIONS OF LAW

A. That section 1101(b)(8)(i) of the Tax Law defines the term vendor as follows:

"8. Vendor. (i) The term "vendor" includes:

(A) A person making sales of tangible personal property or services, the receipts from which are taxed by this article;

(B) A person maintaining a place of business in the state and making sales, whether at such place of business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this article;

(C) A person who solicits business either by employees, independent contractors, agents or other representatives or distribution of catalogs or other advertising matter and by reason thereof makes sales to persons within the state of tangible personal property or services, the use of which is taxed by this article; and

(D) Any other person making sales to persons within the state of tangible personal property or services, the use of which is taxed by this article, who may be authorized by the tax commission to collect such tax by part IV of this article;"

B. That section 1218 of the Tax Law provides that a local law, ordinance or resolution imposing a tax pursuant to sub-part B of part I of Article 29 unless otherwise provided shall be deemed to incorporate the provisions of Articles 28 and 29 of the Tax Law.

C. That the policy of the State Tax Commission regarding section 1101(b)(8) of the Tax Law has always been consistent and is affirmed in its current regulations, i.e., 20 NYCRR 526.10(e)(2), effective September 1, 1976, which provide, in part, that if a person registers voluntarily as a vendor, he is under the same obligations as any other vendor.

D. That the petitioner Franklin Mint Corporation, during the period September 1, 1973 through February 28, 1975 held itself out as a vendor by its activities within the State of New York (National Geographic v. California Equilization Board, 430 U.S. 551, 51 L.Ed 2d 631).

E. That during the period September 1, 1973 through February 28, 1975 the petitioner was a vendor within the intent and meaning of section 1101(b)(8) (i)(B), (C) and (D) of the Tax Law (Matter Tampa Marketing Corp., State Tax Commission, February 13, 1980).

F. That petitioner's voluntary registration as a vendor subjected it to the same obligations as any other vendor in accordance with the provisions of 20 NYCRR 526.10(e)(2).

G. That the petitioner was required to collect sales and use taxes imposed by localities pursuant to the authority of Article 29 of the Tax Law. (Matter of Alden's Inc. v. Tully, 49 N.Y.2d 525).

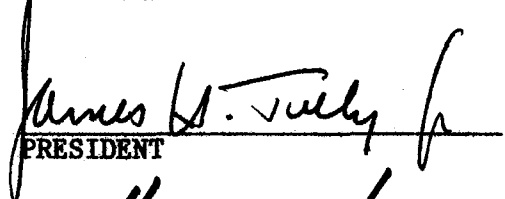
H. That an administrative hearing is not the proper forum to challenge the jurisdiction of the State Tax Commission on the ground that a statute is unconstitutional. (See Tully v. Griffin, Inc., 429 U.S. 68).

I. That the petition of Franklin Mint Corporation is hereby denied.

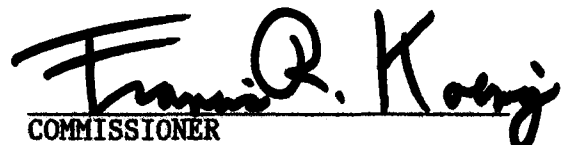
DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER