

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Harrison 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 8/23/65 - 11/30/70. :

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 16th day of January, 1981, he served the within notice of Determination by mail upon Harrison Services, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harrison Services, Inc.
521 Fifth Avenue
New York, NY 10017

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
16th day of January, 1981.

STATE OF NEW YORK
STATE TAX COMMISSION

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of
Harrison Services, Inc. :

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Sales & Use Tax :
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for the Period 8/23/65 - 11/30/70. :

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 16th day of January, 1981, he served the within notice of Determination by mail upon Jerome R. Hellerstein 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. Jerome R. Hellerstein
Guggenheimer & Untermeyer
80 Pine St.
New York, NY 10005

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
16th day of January, 1981.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Harrison Services, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 8/23/65 - 11/30/70. :

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 16th day of January, 1981, he served the within notice of Determination by mail upon Paul Newman 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. Paul Newman
8725 Clifton Way
Beverly Hills, CA 90211

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
16th day of January, 1981.

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

January 16, 1981

Harrison Services, Inc.
521 Fifth Avenue
New York, NY 10017

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
Jerome R. Hellerstein
Guggenheimer & Untermeyer and
80 Pine St.
New York, NY 10005
Taxing Bureau's Representative

Paul Newman
8725 Clifton Way
Beverly Hills, CA 90211

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HARRISON 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 August 23, 1965 through	:	
November 30, 1970.	:	

Applicant, Harrison Services, Inc., 521 Fifth Avenue, New York, New York 10017, 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 August 23, 1965 through November 30, 1970 (File No. 00055).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1976 at 9:15 A.M. Applicant appeared by Guggenheimer & Untermeyer, Esqs. (Jerome Hellerstein, Esq., of counsel) and by Paul Newman, Esq. The Audit Division appeared by Peter Crotty, Esq. (Alfred Rubinstein, Esq., of counsel).

ISSUES

I. Whether the applicant's purchases of materials such as photographs, illustrations (artwork), mechanicals, color separations and typography (typeset copy) were tax exempt purchases for resale to customers.

II. Whether the applicant is liable for use tax on the intermediate use of photographs and illustrations (artwork) between their purchase and transfer to the customer.

III. Whether the applicant's use of photographs and illustrations (artwork) is restricted to fabricating such property, processing, processing or imprinting

such property and such property is then shipped to a point outside this state for use outside this state.

IV. Whether the services performed by art directors and retouchers constitute services subject to tax pursuant to section 1105(c) of the Tax Law.

FINDINGS OF FACT

1. On December 3, 1973, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$168,221.10, plus penalty and interest of \$105,396.10, for a total due of \$273,617.20, for the period August 23, 1965 through November 30, 1970. Applicant executed consents extending the time within which to issue an assessment of sales and use taxes to December 20, 1973.

2. Applicant, Harrison Services, Inc., prepares, produces and sells catalogs to department stores located throughout the United States and Canada. Over 95 percent of its catalog sales during the period herein involved were made to customers located outside New York State. All sales taxes on catalogs sold by applicant within New York have been paid.

3. On audit, the auditor for the Audit Division held the applicant liable for compensating use tax on the following categories in the Purchases Journal:

Layouts and Mechanicals	\$ 469,212
Finished Art	393,558
Photos and Prints	1,026,510
Retouching	260,129
Photostats	63,694
Typography and Engraving	855,593
	<u>\$3,068,696</u>

The determination was based on the test year 1967. The Layouts and Mechanicals account actually represented purchases of the services of art director and layouts of \$445,752 and mechanicals of \$23,460. One half of the

Typography and Engraving account represented purchases of color separations and the other half represented purchases of typography or typeset copy. The auditor held the applicant liable for the combined New York State and New York City use tax rate.

4. During the period at issue, the major steps taken in the production of catalogs were as follows:

(a) Harrison engages an art director, who participates in conferences with the customer concerning the general design and format of the catalog, the merchandise to be featured, the type and extent of art work to be used. He designs the catalog, and selects and supervises the work of the artists, photographers, and retouchers whose work goes into the preparation of the catalog. The art director gives direction to the photographers, assigns work to artists, and later reviews and approves all finished art work. Further on in production, he also directs and approves the assembling of all finished art work and typography into completed catalog page units, in accordance with an original design and layout which he had prepared. The art director designs and sometimes prepares layout of the catalog. This "layout", which is a part of the design of the catalog, is a diagram indicating the general position of photographs, art work, and typeset copy on the page.

(b) In accordance with the art director's instructions, the art work prepared by artists, photographers and others is submitted for review and approval by the store customer. The selected photographs and art work may be touched up before final approval. Retouching is the service performed by a skilled artist, a retoucher, so as to correct or improve a photographed image. The photographs and/or art work are then assembled in accordance with the art director's instructions. These are known as "assembly". A photostatic copy of the assembly is then made for the purpose of preparing a type mechanical.

(c) Once this material is completed, the photographs and illustrations, if any, together with such position mechanicals as may be required, are sent to the color separation houses. The type mechanicals for all pages of the catalog, together with photographs and art work for such pages that are to be reproduced in black and white are sent directly to the printer.

(d) Color photographs are sent to the color separation houses in one of three forms, either as an assembly, or a single photograph of an entire page, or as a group of photographs in different scales.

(e) The photographs and/or illustrations, together with the position mechanicals, are used by the separation houses to convert them into color separations. In this process, one multicolored slide or film is converted into separate pieces of film for each of the primary colors, plus black. Most of the color separators utilized by the applicant during the period at issue were located outside the State of New York.

(f) The separations, together with the original photographs and/or illustrations, are sent by the color separation house directly to the printer. The printers use these materials, together with the type mechanicals to prepare the offset lithographic plates from which the pages of the finished catalog are made. All the printers employed by the applicant during the period at issue were located outside the State of New York, where they printed the catalogs sold by the applicant to its customers.

5. On the completion of the printing process, all the photographs, art work and type mechanicals are delivered to the customer by the printer pursuant to a provision in the applicant's standard contract with its customers, which was in accordance with the custom of trade. These items were used by the customers in a variety of ways for promotion and for employee training.

6. Applicant has conceded its liability for use taxes on photostats purchased by it during the period herein involved.

7. Applicant at all times acted in good faith.

CONCLUSIONS OF LAW

A. That the purchases of photographs, illustrations (art work), mechanicals and typography (typeset copy) by the applicant, Harrison Services, Inc., although transferred to its customers, were used by the applicant in the production of catalogs; therefore, they were not purchased for resale as such or as a physical component part of tangible personal property within the intent and meaning of section 1101(b)(4) of the Tax Law. Matter of Baronet Lithograph Co., STC August 25, 1978.

B. That the applicant is liable for use tax on the intermediate use of photographs and illustrations in accordance with section 1110(A) of the Tax Law.

C. That the applicant's use of photographs and illustrations is not restricted to fabricating such property, processing, printing or imprinting such property and then shipping to a point outside the State for use outside the State within the meaning and intent of section 1119(a)(4) of the Tax Law.

D. That the photographs, illustrations, mechanicals, typography and photostats constitute equipment used directly and exclusively in the production of catalogs; therefore, purchases thereof are exempt from the New York State sales and use tax in accordance with section 1115(a)(12) of the Tax Law. Said items are subject only to the New York City local tax rate pursuant to section 1210(a)(1) of the Tax Law.

E. That the color separations were sent directly by the color separators to the printers who were located outside New York State. The applicant is therefore not subject to tax on purchases of color separations.

F. That the services performed by applicant's art directors and retouchers constitute producing, fabricating or processing tangible personal property not purchased by the applicant for resale and are subject to tax pursuant to section 1105(c)(2) of the Tax Law.

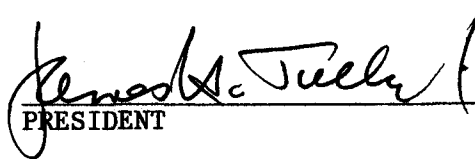
G. That the penalties and interest above the minimum statutory rate are cancelled.

H. That the application of Harrison Services, Inc. is granted to the extent indicated in Conclusions of Law "D", "E" and "G" 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 December 31, 1973; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 16 1981


PRESIDENT


COMMISSIONER


COMMISSIONER