

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Siegfried Lobel :
d/b/a Government Data Publications :
: 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 :
6/1/72 - 3/31/75. :

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Siegfried Lobel, d/b/a Government Data Publications the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Siegfried Lobel
d/b/a Government Data Publications
1661 McDonald Ave.
Brooklyn, NY 11230

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
2nd day of October, 1981.

Ernie A. Hegelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Siegfried Lobel :
d/b/a Government Data Publications :
: 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 6/1/72 - 3/31/75. :

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Jack Forgash the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Forgash
1028 E. 9th St.
Brooklyn, NY 11230

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
2nd day of October, 1981.

Carmie A. Haglund

J. Vredenburg

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

October 2, 1981

Siegfried Lobel
d/b/a Government Data Publications
1661 McDonald Ave.
Brooklyn, NY 11230

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,
Kathy Pfaffenbach

STATE TAX COMMISSION

cc: Petitioner's Representative
Jack Forgash
1028 E. 9th St.
Brooklyn, NY 11230
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SIEGFRIED LOBEL	:	DECISION
d/b/a GOVERNMENT DATA PUBLICATIONS	:	
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 June 1, 1972	:	
through March 31, 1975.	:	

Petitioner, Siegfried Lobel, doing business as Government Data Publications, 1661 McDonald Avenue, Brooklyn, New York, filed a petition for revision of a determination or for a refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1972 through March 31, 1975 (File No. 16254).

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 August 15, 1978 at 10:45 A.M. Petitioner appeared by Jack Forgash, CPA. The Audit Division appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

Whether receipts from the sale of petitioner's publication, "U.S./R & D", are exempt from sales taxes pursuant to section 1115(a)(5) of the Tax Law, as receipts from the sale of a periodical.

FINDINGS OF FACT

1. On June 18, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Siegfried Lobel, d/b/a Government Data Publications, for the periods June 1, 1972 through

August 31, 1975, asserting tax due of \$3,593.19 plus interest of \$1,496.33 for a total due of \$5,089.58. Said Notice was based on a field audit disclosing additional sales and/or use tax due.

2. Petitioner timely filed a petition for a hearing to review the aforesaid determination.

3. Petitioner does not dispute the audit figures, but contends that his publication is a periodical and, as such, is exempt from the imposition of sales tax.

4. The petitioner was present at the hearing and sworn. After two questions, it was agreed that a previously prepared written statement, Exhibit 1, would constitute his testimony. There was no cross-examination.

5. The cover page of each issue of said publication, "U.S./R & D" has imprinted thereon the words "Privately circulated only", and suggests that the copy be retained for permanent reference value as the subscriber will receive semi-annual indexes.

6. Said publication is not available to the public at newsstands and bookstores, but is only available through subscription and at libraries.

7. The publication is issued monthly. Each issue contains an index, and numerous items consisting of a headline, a date line, a short statement, background material and a reference number in parentheses at the end. No testimony was adduced as to the significance of the reference number

8. The petitioner's statement indicates that several named people prepared the items, depending on the field of knowledge. Mr. Lobel stated on the record that they rewrite, combine and summarize items, and 50 percent to 75 percent of the items are based on press releases.

9. No testimony was adduced as to whether the publication has second class mailing privileges as a periodical.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax upon "The receipts from every retail sale of tangible personal property except as otherwise provided in this article." Section 1115(a)(5) of the Tax Law exempts from tax the sale of newspapers and periodicals.

B. That an interpretive rule or regulation construing the statutory exemption for periodicals had not been promulgated for the period under review. In the absense of a definition of a periodical within the meaning of the sales and use tax exemption statute, resort has to be made to a test of common understanding influenced by authority from collateral sources. (G & B Publishing Co. v. Department of Taxation & Finance, Sales Tax Bureau, 57 A.D.2d 18, 392 N.Y.S.2d 938; Research Institute of America Inc. v. Department of Taxation & Finance, 99 Misc. 2d 243, 415 N.Y.S.2d 928.) A periodical is a vehicle for the transmission of news, opinions, ideas, information and literature. It has the common elements of periodicity, general availability to the public, and continuity as to title and general nature of content from issue to issue. It does not usually posses a substantial and permanent binding and the writings contained therein are customarily the product of an editorial staff rather than a single author. (Business Statistics Organization, Inc. v. Joseph, 299 N.Y. 443, 87 N.E.2d 505.)

C. That the petitioner has not sustained his burden of proof that the publication "U.S./R & D" is a periodical exempt from tax under section 1115(a)(5) of the Tax Law.

D. That section 1105(c)(1) of the Tax Law imposes a tax upon "the furnishing of information by printed, mimeographed or multigraphed matter...".

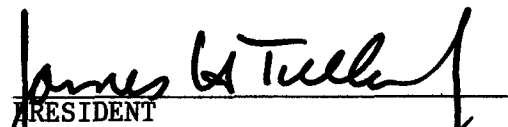
E. That sales of the publication "U.S./R & D" are subject to the imposition of sales tax pursuant to both subdivision (a) and (c)(1) of section 1105 of the Tax Law.


F. That the petition of Siegfried Lobel, d/b/a Government Data Publications is hereby denied.

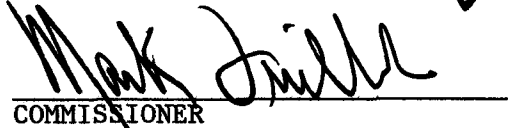
DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION


RESIDENT


COMMISSIONER


COMMISSIONER