

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MTM Printing Co., 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 3/1/74 - 2/28/77. :

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 MTM Printing Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

MTM Printing Co., Inc.
23-21 College Point Blvd.
College Point, NY 11356

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.

Cornelia R. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MTM Printing Co., 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 3/1/74 - 2/28/77.

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 Arthur D. Steinthal 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. Arthur D. Steinthal
Steinthal & Steinthal
370 Lexington Ave.
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 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.

Cornelia A. Haglund

J. Vredenburg

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

June 19, 1981

MTM Printing Co., Inc.
23-21 College Point Blvd.
College Point, NY 11356

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
Arthur D. Steinthal
Steinthal & Steinthal
370 Lexington Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MTM PRINTING CO., 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 March 1, 1974 :
through February 28, 1977. :

Petitioner, MTM Printing Co., Inc., 23-21 College Point Boulevard, College Point, New York 11356, 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 March 1, 1974 through February 28, 1977 (File No. 20872).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 29, 1979 at 1:15 P.M. Petitioner appeared by Arthur D. Steinthal, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's purchases of artwork, offset negatives, film and plates are subject to the New York City sales and use tax or whether they are exempt as purchases for resale.

FINDINGS OF FACT

1. On August 16, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against MTM Printing Co., Inc. for the period March 1, 1974 through February 28, 1977 in the amount of \$8,033.84 tax, plus penalties and interest. The Notice was issued as a result of a field audit.

2. Petitioner executed a consent extending the period of limitation for assessment to March 20, 1978.

3. Petitioner was engaged in the sale of printing services. It purchased artwork, offset negatives, film and plates for use in its business operation. The film was used to photograph artwork such as a letterhead. This image was transferred through negatives onto aluminum sensitized plates which were affixed to the printing press during production.

4. The Audit Division conceded that the tax determined due should be reduced by \$5,917.19 based on evidence submitted at a conference. Petitioner agreed to tax due of \$599.32 at the same conference. The amount of \$1,517.33 remaining at issue was further reduced by the Audit Division to \$650.20 and represents tax due on preparation costs including artwork, offset negatives, film and plates for the period December 1, 1975 through February 28, 1977 subject to the New York City sales and use tax as retail purchases.

5. It was the petitioner's position that preparation costs including artwork, offset negatives, film and plates were purchases for resale since all preparation costs were included in the selling price billed its customers and were often separately stated. The sales tax was charged its customers on the total invoice price whether or not the preparation costs were stated separately.

6. Petitioner argued that the negatives and plates became the property of its customers and were retained only for use in subsequent printing orders for the same customer. Preparation costs were not billed when reorders were made.

7. The Audit Division, in support of its position, cited a Commissioner's opinion dated December 15, 1969, which stated that finished negatives, positives and plates are equipment used or consumed directly in production of printed matter for sale. The equipment may be purchased without payment of sales or

use tax if the printer and his customer enter into a written agreement for the sale of such to the customer prior to any use by the printer.

8. Petitioner offered no evidence to show that a written agreement existed between itself and any of its customers for the resale of any artwork, finished plates or negatives prior to any use by it.

9. Petitioner acted in good faith and reasonable cause existed for not paying over the tax at issue.

CONCLUSIONS OF LAW

A. That the purchases of artwork, offset negatives, film and plates by petitioner, MIM Printing Co., Inc., were purchases for use by petitioner in its production process; therefore, they were not purchases for resale as such or as a physical component part of tangible personal property within the meaning and intent of section 1101(b) (4) of the Tax Law. Matter of Baronet Lithograph Co., State Tax Commission, August 25, 1978.

B. That the use tax due as revised by the Audit Division in Finding #4 is proper and in accordance with section 1107 of the Tax Law.

C. That the penalties and interest in excess of the minimum statutory rate are cancelled.

D. That the petition of MIM Printing Co., Inc. is granted to the extent indicated in Conclusions "B" and "C" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 16, 1977 to tax due of \$1,249.52 and credit petitioner with any payments made; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER