

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Murphy 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 1st day of May, 1981, he served the within notice of Decision by mail upon Murphy Printing Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Murphy Printing Co., Inc.
c/o Robert Aldrich, President
56 Hamilton Ave.
White Plains, NY 10601

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
1st day of May, 1981.

Ernie P. Haglund

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

May 1, 1981

Murphy Printing Co., Inc.
c/o Robert Aldrich, President
56 Hamilton Ave.
White Plains, NY 10601

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

Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 30, 1980 at 1:15 P.M. Petitioner appeared by Abraham Homnick, Treasurer. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales and use taxes due from petitioner for the period March 1, 1974 through February 28, 1977.

FINDINGS OF FACT

1. Petitioner, Murphy Printing Co., Inc., operated a printing business located at 56 Hamilton Avenue, White Plains, New York.
2. On April 24, 1978, 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 petitioner for the period March 1, 1974 through February 28, 1977

for taxes due of \$12,271.08, plus penalty and interest of \$6,779.06, for a total of \$19,050.14.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period March 1, 1974 through February 28, 1977, to June 20, 1978.

4. On audit, the Audit Division examined sales invoices for the month of May 1976 and determined that 19.15 percent of petitioner's reported nontaxable sales were not substantiated by exemption certificates and thus were disallowed. This percentage was applied to nontaxable sales reported for the audit period of \$602,078.34 which resulted in additional taxable sales of \$115,298.00 and tax due thereon of \$8,073.93.

The Audit Division also held petitioner liable for sales taxes of \$4,023.82 based on its analysis of the tax accrual account which indicated that credits recorded in said account exceeded the sales tax paid on returns filed.

A review of fixed asset acquisitions disclosed use taxes due of \$173.33 to which the petitioner conceded.

5. At a pre-hearing conference, petitioner objected to the month tested by the Audit Division. Consequently, the Audit Division examined sales invoices for November 1974 and February 1977. The disallowed nontaxable sales found in said months were combined with May 1976 which resulted in a reduction in the percentage of disallowance from 19.15 percent to 8.99 percent. Accordingly, the Audit Division conceded that the tax due on such sales be adjusted to \$4,149.49.

6. Petitioner argued that it was its understanding from the conference that only the months of November 1974 and February 1977 would form the basis for determining any additional sales taxes due.

7. Petitioner submitted exemption certificates covering the following sales at issue:

<u>Date of Sale</u>	<u>Customer</u>	<u>Amount</u>	<u>Type of Certificate</u>
May 1976	Scarsdale Family Counseling Service	\$ 95.40	exempt organization
May 1976	Westchester Illustrated	1,300.00	resale
February 1977	Community Action Program	391.00	exempt organization
February 1977	Air Age, Inc.	776.00	resale

8. The tax accrual account in petitioner's general ledger shows debits recorded therein for items other than sales tax payments. Petitioner offered no documentation to show that such debits were properly entered.

9. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law specifically provides that it shall be presumed that all receipts for property are subject to tax until the contrary is established and the burden of proving that any receipt is not taxable shall be upon the person required to collect tax; that petitioner has sustained this burden for those sales referred to in Finding of Fact "7". However, petitioner has failed to sustain the burden of proof required by said section of the Tax Law with respect to the remaining sales at issue and, therefore, is liable for the taxes imposed on such sales pursuant to section 1133(a) of the Tax Law.

B. That the Audit Division properly considered its findings from the three test months in determining petitioner's sales tax liability as revised in Finding of Fact "5". It is reasonable to assume that a three-month sample will statistically produce a more accurate result than a two-month sample. Moreover, it would have been improper for the Audit Division to ignore May 1976 unless such month was not representative of petitioner's business activity.

C. That based on Conclusions of Law "A" and "B", the percentage of disallowance on reported nontaxable sales is reduced to 4.01 percent and additional taxable sales for the period March 1, 1974 through February 28, 1977 are adjusted to \$24,685.00.

D. That petitioner failed to establish through documentary or other substantial evidence that the debits recorded in the tax accrual account, other than for sales tax payments, were proper.

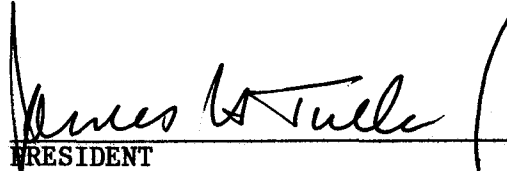
E. That the penalty and interest in excess of the minimum statutory rate are cancelled.

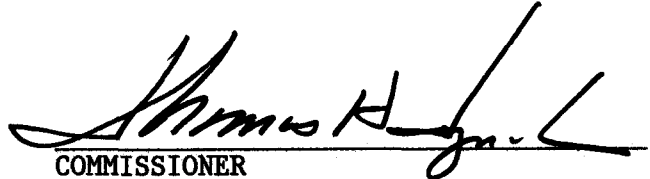
F. That the petition of Murphy Printing Co., Inc. is granted to the extent indicated in Conclusions of Law "C" and "E"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 24, 1978; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 01 1981


RESIDENT


COMMISSIONER


COMMISSIONER