

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
National Liberty Marketing, Inc. :
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 Years 1972 - 1974. :

AFFIDAVIT OF MAILING

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 17th day of April, 1981, he served the within notice of Decision by mail upon National Liberty Marketing, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

National Liberty Marketing, Inc.
Liberty Park
Frazer, PA 19355

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
17th day of April, 1981.

Ann P. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
National Liberty Marketing, 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 Years 1972 - 1974. :

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 17th day of April, 1981, he served the within notice of Decision by mail upon Cornelius J. Faulkner 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. Cornelius J. Faulkner
c/o National Liberty Marketing, Inc.
Liberty Park
Frazer, PA 19355

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
17th day of April, 1981.

Cornelius J. Faulkner

Jay Vredenburg

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

April 17, 1981

National Liberty Marketing, Inc.
Liberty Park
Frazer, PA 19355

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
Cornelius J. Faulkner
c/o National Liberty Marketing, Inc.
Liberty Park
Frazer, PA 19355
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
NATIONAL LIBERTY MARKETING, 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 January 1,	:	
1972 through August 31, 1975.	:	

Petitioner, National Liberty Marketing, Inc., Liberty Park, Valley Forge, Pennsylvania, 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 January 1, 1972 through August 31, 1975 (File No. 16840).

A formal hearing was duly held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building No. 9, Albany, New York, on April 26, 1978 at 10:30 A.M. The petitioner appeared by Cornelius J. Foulkner, Jr., Esq. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove and Harry Kadish, Esqs., of counsel).

ISSUES

I. Whether petitioner is qualified to receive a refund for taxes which it itself did not pay.

II. Whether petitioner's refund claim is timely.

FINDINGS OF FACT

1. An application was filed by petitioner for refund of sales and use taxes in the amount of \$37,541.59 for the period January 1, 1972 through August 31, 1975. This was received by the Sales Tax Bureau on September 30, 1975.

2. The petitioner is located at Valley Forge, Pennsylvania. It has no office in New York. It is not a registered vendor under the Sales and Use Tax Law and it did not file sales and use tax returns.

3. Petitioner is an advertising agency working on behalf of affiliated insurance companies. Pursuant to its contracts, it develops sales campaigns for the products of those companies. It sells those products through direct mail campaigns, newspaper advertisements and, to a very limited extent, television spot ads.

4. Petitioner had contracts with advertising agencies in the City of New York. Those agencies were identified as James Neal Harvey Advertising; Altman, Vos & Reichberg; and Wunderman, Ricotta & Kline. Petitioner would commission those agencies to develop an advertisement. The agencies would submit to petitioner completed single copy of the advertisement from which petitioner would run copies to place in the newspaper or in the mail. The three agencies in turn subcontracted out such work as artist drawings and photography to independent specialty houses. The in-house copywriters at the advertising agencies would write out the words that would go with these drawings and photographs, type them, and then send them off to a printer. They would essentially type them over on a piece of high quality paper and this would be sent out to the agency. The agency would literally cut and paste these pictures and typography to an art board, which is a heavy piece of cardboard and, in effect, is a blown-up ad. This is called the "mechanical". The mechanical would be sent to petitioner and, if approved, would then be printed in large quantities.

5. A mechanical is a piece of heavy paper, almost like cardboard, generally about two feet wide and perhaps three feet long and pasted to it are the drawings and the art that will appear in an advertisement. The result is a very large scale prototype of an advertisement which will eventually be photographed on a plate and used to print the advertisement.

6. Once the plate was prepared, the mechanicals were discarded as being useless thereafter. The mechanicals were not consumed, nor were they physically incorporated into the plate.

7. The contracts between petitioner and the advertising agencies were frequently oral. Petitioner has submitted no written contracts with the agencies.

8. Petitioner did not appoint any of the advertising agencies as its agent to purchase for itself the personal property on which the sales tax in issue was imposed. The advertising agencies contracted in their own names with the specialty houses.

9. The advertising agencies would generally bill petitioner on their costs plus a ten percent surcharge and sometimes a bonus depending on how well the advertising succeeded. These bills generally itemized as a cost the sales taxes paid by the advertising agency to the suppliers. Copies of these bills have not been submitted by petitioner. The petitioner admits that with respect to all bills the petitioner itself "was not aware that it was paying sales taxes". In the case of bills received from the James Neil Harvey agency, there was no itemization of the amount of sales taxes paid. The petitioner has itself estimated the amount of sales taxes which would have been paid on these bills.

CONCLUSIONS OF LAW

A. That petitioner cannot receive a refund even assuming taxes were paid erroneously. A refund is authorized under section 1139(a) of the Tax Law only where the petitioner itself has paid said taxes to the State or paid said taxes to a vendor which in turn has paid them to the State. This petitioner has not done. Petitioner has merely paid a price for goods or services to someone else who has paid the tax to a vendor who in turn has paid the State. This is too indirect a payment to qualify for a refund.

B. That the petition must be denied as to all taxes paid on or before August 31, 1972. Such taxes would have appeared on the vendor's sales tax return filed on September 20, 1972 (section 1136(b) of the Tax Law). The claim for refund in this case was received on September 30, 1975, more than three years subsequent to the filing of the vendor's return and is barred by the statute of limitations under section 1139(a) of the Tax Law.

C. That the refund claim was properly denied and the petition is denied.

DATED: Albany, New York

APR 17 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER