

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Parenti Studio, 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:
6/1/74 - 5/31/77.

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 9th day of October, 1981, he served the within notice of Decision by certified mail upon Parenti Studio, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Parenti Studio, Inc.
141 E. 44th St.
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
9th day of October, 1981.

Conrad A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Parenti Studio, Inc. :
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Period 6/1/74 - 5/31/77.

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 9th day of October, 1981, he served the within notice of Decision by certified mail upon Herbert Granoff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020

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
9th day of October, 1981.

Camie A. Haglund

J. Vredenburg

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

October 9, 1981

Parenti Studio, Inc.
141 E. 44th St.
New York, NY 10017

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
Herbert Granoff
8 Wilshire Dr.
Great Neck, NY 11020
Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 17, 1980 at 1:15 P.M. Petitioner appeared by Herbert Granoff, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether purchases of artwork, photographs, negatives and printing used by the petitioner to prepare posters and brochures were tax exempt purchases for resale to its customers.

FINDINGS OF FACT

1. On January 9, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Parenti Studio, Inc. for the period June 1, 1974 through May 31, 1977 in the amount of

\$6,866.74 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 for the period June 1, 1974 through May 31, 1977 to December 19, 1978.

3. Petitioner operated a commercial art studio. It's activities included the preparation of advertising material such as posters and brochures for its customers. In the performance of its activities, petitioner purchased artwork, photographs, negatives, preliminary drawings, printing and other supplies. These purchases were used by the petitioner in preparing mechanicals and layouts which were ultimately used in the production of the posters and brochures.

4. On audit, the Audit Division selected the months of July 1976 and May 1977 for the examination of sub-contracts of artwork. The Audit Division determined that 26.64526 percent of the total sub-contracts examined were taxable purchases of artwork on which no tax was paid. It applied the above rate to the total subcontracts in the audit period and determined additional taxable purchases of \$322,150.48 and tax due thereon of \$6,866.74. It was the Audit Division's position that the petitioner's purchases of artwork were for use in the petitioner's production process and subject to the imposition of sales tax under section 1105(a) of the Tax Law.

5. Petitioner maintained complete and adequate records which would have enabled the Audit Division to determine the exact amount of tax due.

6. Petitioner contended that the artwork, photographs, negatives and printing were billed and transferred to its customers and therefore, such materials were for resale. Petitioner offered no evidence to show that a

written agreement existed for resale of such material prior to petitioner's use.

7. The petitioner at all times acted in good faith.

CONCLUSIONS OF LAW

A. That the purchases of artwork, photographs, negatives and printing by petitioner, Parenti Studio, Inc., although transferred to its customers were used by the petitioner in the preparation of posters and brochures; therefore, such purchases were not 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 Laux Advertising Inc. vs. State Tax Commission, 67 A.D.2d 1066).

B. That the artwork, photographs, negatives and printing constitute equipment used directly and exclusively in the production of posters and brochures, therefore, such purchases are exempt from the New York State sales and use tax in accordance with section 1115(a)(12) of the Tax Law. That such items are subject to the New York City local tax rate pursuant to section 1210(a)(1) of the Tax Law.

C. That since petitioner maintained complete records from which the exact amount of tax could be determined the test period procedures adopted by the Audit Division are arbitrary and capricious (Matter of Chartair, Inc. v. State Tax Commission, 65 A.D.2d 44). Accordingly the additional tax due is reduced to \$292.58 which represents tax due for only the months of July 1976 and May 1977.

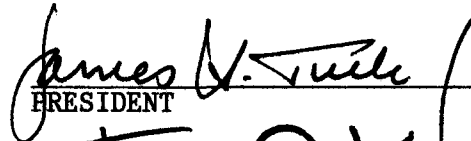
D. That reasonable cause exists for the cancellation of penalty and reduction of interest to the minimum statutory rate.

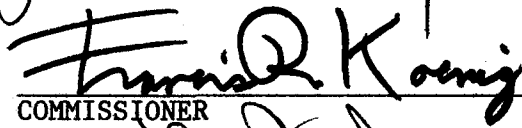
E. That the petition of Parenti Studio, Inc. is granted to the extent contained in Conclusion of Law "B", "C" and "D" that the Audit Division is hereby directed to accordingly modify the Notice of Determination issued January 9, 1978 and that except as so granted, the petition is in all other respects denied.

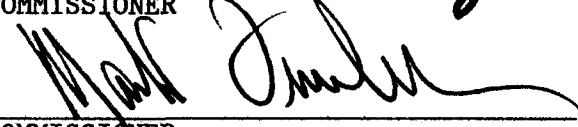
DATED: Albany, New York

OCT 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER