

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
RKO General, 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 6/1/70 - 5/31/73.

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 15th day of May, 1981, he served the within notice of Decision by mail upon RKO General, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

RKO General, Inc.
1440 Broadway
New York, NY 10018

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
15th day of May, 1981.

Connie A. Hayden

J. Vredenburg

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

May 15, 1981

RKO General, Inc.
1440 Broadway
New York, NY 10018

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 OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RKO GENERAL, 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 June 1, 1970 through May 31,	:	
1973.	:	

Petitioner, RKO General, Inc., 1440 Broadway, New York, New York 10018, 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 June 1, 1970 through May 31, 1973 (File No. 10288).

Petitioner has requested, in writing, that this matter be submitted to the State Tax Commission for a determination without the necessity of a formal hearing.

The State Tax Commission, based upon the record as it is presently constituted, renders the following decision.

ISSUES

I. Whether petitioner was required to pay tax due on film rentals at the rate in effect on the date payment was made or at the rate in effect when the contract was signed.

II. Whether the transitional provisions of the Tax Law [specifically section 1106(a) and (f)] apply to petitioner's rental of films.

III. Whether reasonable cause exists for waiver of penalties and additional interest.

FINDINGS OF FACT

1. On July 23, 1973, petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period June 1, 1970 through May 31, 1973 to September 19, 1974. On June 19, 1974, petitioner executed a further consent extending the period of limitation with respect to sales and use taxes for the period June 1, 1970 through May 31, 1973 to December 19, 1974.

2. On August 6, 1974, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due under Articles 28 and 29 of the Tax Law to RKO General, Inc. and John B. Poor, Patrick J. Winkler, Kenneth Frankel and Hubert J. Delynn, individually and as officers, for the period June 1, 1970 through May 31, 1973 in the amount of \$56,294.33, plus penalty and interest of \$16,664.89, for a total of \$72,959.22, based upon an audit of petitioner's books and records. Petitioner timely filed a petition for a hearing to review the aforesaid determination.

3. Petitioner is a subsidiary of General Tire and Rubber Company of Akron, Ohio. All divisions of petitioner which operate in New York State were audited. The WOR division owns and operates WOR TV (Channel 9), WOR Radio (AM), WXLO Radio (FM). Petitioner also rents studios for the recording of television commercials. Tax is accrued on film rentals by the WOR division and the proper allocations are made to various counties. Petitioner paid the tax due on film rentals at the rate in effect when the contract was signed instead of the date payment was made. The Audit Division concluded that petitioner's method of reporting was incorrect; that with respect to long-term rentals, the tax rate in effect at the date of payment was made was applicable.

The Audit Division assessed the difference between the amount petitioner reported and the tax due based upon the rate in effect at the time of payment for the film rental.

4. A typical Film Lease Agreement comprised the following: petitioner, pursuant to agreement, acquired a license from a film distributor to broadcast a series of motion picture films over a seven-year period. The terms for payment of a total of \$600,000 were as follows: \$60,000 upon delivery of the first two prints, \$90,000 upon delivery of three specific titles and the balance of \$450,000 payable in equal consecutive monthly installments of \$18,750 each.

5. It was the petitioner's position that the payments were not subject to the sales tax rate increase effective April 1, 1969 in that said payments were made subsequent to the date of the sale tax rate change pursuant to formal contracts executed and completed prior to December 31, 1968 in respect to which more than 10 percent of the sales price had been paid before April 1, 1969.

6. Petitioner was advised by its tax department and its counsel that its method of computing the tax was correct and relied upon said advice.

CONCLUSIONS OF LAW

A. That pursuant to section 1106(a) and (f) of the Tax Law, the sales tax rate increase effective April 1, 1969 shall not apply to a delivery or transfer of possession of tangible personal property made after said date pursuant to an agreement for the sale of said property made before December 1, 1968 if: (1) such agreement for the sale of said property was made in writing, (2) the particular item or items so sold were segregated before December 1, 1968 and (3) the purchaser before April 1, 1969 paid to the vendor not less than 10 percent of the sales price.

B. That 20 NYCRR 525.2(a) provides:

"(2) The sales tax is a 'transaction tax', liability for the tax occurring at the time of the transaction. Generally speaking, the taxed transaction is an act resulting in the receipt of consideration for the transfer of title, or possession or both to property or rendition of services from one person to another...."

C. That each individual monthly payment by petitioner constitutes a "transaction" pursuant to 20 NYCRR 525.2(a)(2), supra; that the tax is, therefore, due when the payments were made and not the tax rate in effect at the time the contract was signed.

D. That the transitional provisions of section 1106(a) and (f) of the Tax Law do not apply to petitioner's rental of film involving payments in monthly installments.

E. That reasonable cause exists for the waiver of penalties and additional interest except minimum interest.

F. That the Audit Division is directed to recompute the tax in accordance with Conclusion of Law "E", supra.

G. That the petition of RKO General, Inc. is granted to the extent indicated in Conclusions of Law "E" and "F", supra, and in all other respects is denied.

DATED: Albany, New York

MAY 15 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER