

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ruth Outdoor Advertising 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 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 3rd day of April, 1981, he served the within notice of Decision by mail upon Ruth Outdoor Advertising Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ruth Outdoor Advertising Co., Inc.
99 New Shaker Rd.
Albany, NY

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
3rd day of April, 1981.

James A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Ruth Outdoor Advertising Co., Inc. :

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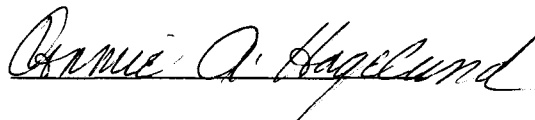
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of April, 1981, he served the within notice of Decision by mail upon John Starrs the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. John Starrs
100 State Street
Albany, NY 12207

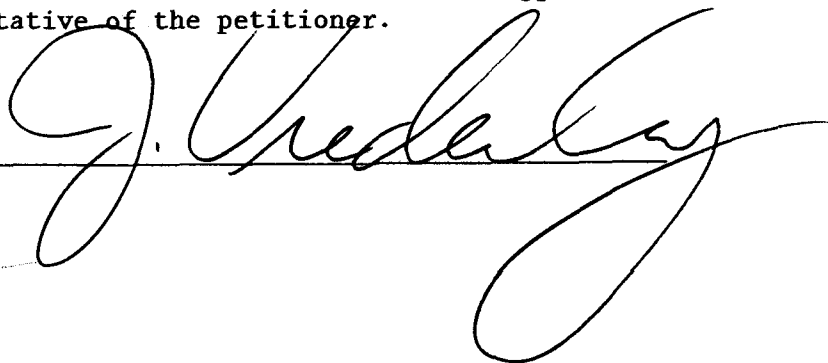
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd day of April, 1981.



Jamie A. Haglund



Jay Vredenburg

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

April 3, 1981

Ruth Outdoor Advertising Co., Inc.
99 New Shaker Rd.
Albany, NY

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
John Starrs
100 State Street
Albany, NY 12207
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, Building #9, State Campus, Albany, New York, on January 15, 1979 at 2:45 P.M. Petitioner appeared by John Starrs, Esq. The Audit Division appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

- I. Whether the painting of advertising on outdoor billboards by an artist is a service subject to the imposition of sales tax.
- II. Whether petitioner is liable for sales or use tax on the purchase of paper advertising panels used in connection with performing advertising services.
- III. Whether the penalties imposed pursuant to section 1145(a) of the Tax Law and interest in excess of the minimum statutory rate should be waived.

FINDINGS OF FACT

1. On February 13, 1974, 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, Ruth Outdoor Advertising Co., Inc., for the period

June 1, 1970 through May 31, 1973 in the amount of \$4,227.44, plus penalty and interest of \$1,240.19, for a total of \$5,467.63. On September 10, 1973, the petitioner executed a consent extending the period of limitation for assessment of sales or use taxes for the period at issue to March 20, 1974.

2. Petitioner is engaged in outdoor billboard advertising services.

3. On audit, the Audit Division's auditor examined petitioner's purchase invoices for the entire period at issue. This examination disclosed that petitioner failed to pay a sales or use tax on purchases of painting services by E. J. Rogers, paper panels used in performing advertising services, and other recurring expense items. The following is a breakdown of the taxes determined to be due for each specific area:

Painting Services	-	\$ 901.51
Paper Panels	-	\$1,718.70
Recurring Expenses	-	\$1,607.23

The tax determined with respect to the expense purchases is not at issue.

4. Petitioner engaged E. J. Rogers ("Rogers"), an artist, to paint advertisements on outdoor billboards. The billboards were approximately 14' x 48'. Rogers painted letters, illustrations and graphic displays from artwork provided to him by petitioner. In some instances, Rogers would act in the capacity of consultant as to the design of the artwork, or actually create the artwork.

Petitioner was charged by Rogers for such services according to the square footage of the billboard painted. The Audit Division considered the services performed by Rogers subject to tax under sections 1105(c)(3) or 1105(c)(5) of the Tax Law.

5. Petitioner provided Rogers with all necessary supplies and equipment, such as brushes, paint and scaffolding.

6. The paper advertising panels used by petitioner in performing advertising services were sections of finished advertising copy that were individually placed on billboards. Petitioner did not modify nor alter said panels in any manner.

7. Petitioner charged its customers a monthly fee for the advertising services rendered.

8. Petitioner acted in good faith at all times and did not intend to evade tax.

CONCLUSIONS OF LAW

A. That the services provided by E. J. Rogers as described in Finding of Fact "4" do not constitute maintaining, servicing and repairing within the meaning and intent of sections 1105(c)(3) and 1105(c)(5) of the Tax Law; however, such services are subject to tax under section 1105(c)(2) of the Tax Law as producing, fabricating, processing, printing or imprinting to the extent that billboards on which the services were performed are tangible personal property (the record does not contain the facts necessary to make a determination as to whether the billboards are realty or personalty).

B. That the services described in Finding of Fact "4" performed on real property are services which are not under the purview of section 1105(c) of the Tax Law and therefore are not subject to tax.

C. That the advertising panels purchased by petitioner were purchases of tangible personal property; that, since petitioner is engaged in a service not subject to the imposition of sales tax, all purchases of tangible personal property used in performing such services are purchases at retail which are subject to the sales tax, within the meaning and intent of sections 1101(b)(1) and 1101(b)(4) of the Tax Law.

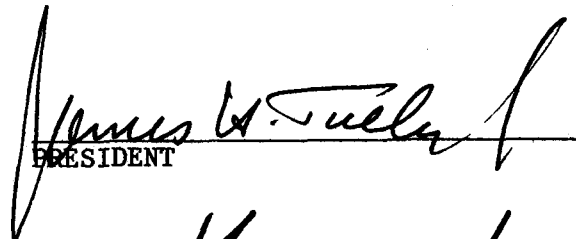
D. That the penalties and the interest in excess of the minimum statutory rate imposed pursuant to section 1145(a) of the Tax Law are cancelled.

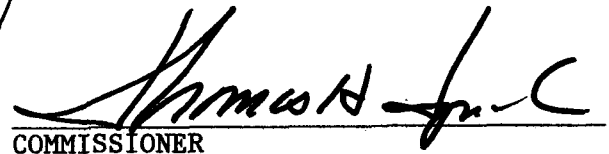
E. That the petition of Ruth Outdoor Advertising Co., Inc. is granted to the extent indicated in Conclusions of Law "B" and "D"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales Taxes Due issued on February 13, 1974; and that, except as so granted, the application is in all other respects denied.

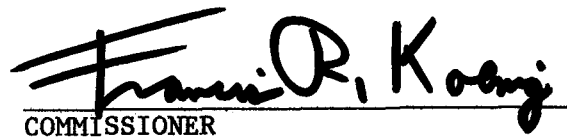
DATED: Albany, New York

STATE TAX COMMISSION

APR 03 1981


PRESIDENT


COMMISSIONER


COMMISSIONER