

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Seair Consultants, 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 - 8/31/77.

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 3rd day of July, 1981, he served the within notice of Decision by mail upon Seair Consultants, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seair Consultants, Inc.
199 Jericho Tpk.
Floral Park, NY 11001

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 July, 1981.

James G. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Seair Consultants, 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 - 8/31/77.

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 3rd day of July, 1981, he served the within notice of Decision by mail upon Norman Steinberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman Steinberg
100 Merrick Rd., Suite 412E
Rockville Ctr., NY 11570

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 July, 1981.

Annex P. Haglund

J. Vredenburg

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

July 3, 1981

Seair Consultants, Inc.
199 Jericho Tpk.
Floral Park, NY 11001

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
Norman Steinberg
100 Merrick Rd., Suite 412E
Rockville Ctr., NY 11570
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SEAIR CONSULTANTS, 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, 1974 through August 31,	:	
1977.	:	

Petitioner, Seair Consultants, Inc., 199 Jericho Turnpike, Floral Park, New York 11001, 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, 1974 through August 31, 1977 (File No. 22183).

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 January 20, 1981 at 2:45 P.M. Petitioner appeared by Norman Steinberg, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's credit services are subject to sales tax and if so, whether the receipts are subject to taxes imposed under section 1105(c)(1) and 1210 or section 1212-A(h)(2)(i)(A) of the Tax Law.

II. Whether petitioner is liable for sales tax charged to a customer where the customer refused to pay the tax so charged.

FINDINGS OF FACT

1. Petitioner, Seair Consultants, Inc., is engaged in providing collection and credit services to member subscribers.

2. On March 8, 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 June 1, 1974 through August 31, 1977 for taxes due of \$1,550.52, plus penalty and interest of \$655.82, for a total of \$2,206.34.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period at issue, to September 1, 1978.

4. The audit performed by the Audit Division disclosed that petitioner failed to collect tax on its charges for collection services during the period March 1, 1977 through August 31, 1977 resulting in additional taxes due of \$207.36. The Audit Division also found that petitioner did not remit tax of \$133.80 that was billed to a customer in June 1976; however, adjustments were made for overpayments leaving taxes due of \$111.16.

Petitioner's only customer located in New York for credit services was JFK Airport Custom Brokers Association, Inc. which has approximately 100 members. Petitioner did not collect tax on the annual membership fees charged to said association amounting to \$15,400 for the period under audit which resulted in additional tax due of \$1,232.00.

At the hearing, petitioner conceded the tax determined due on collection services.

5. Petitioner's standard agreement with its member provided that for the sum of fifty dollars per annum, Seair will make available to members information retained in the offices of Seair, pertaining to credit information relative to past, present and/or prospective accounts. The agreement further provided that all information supplied to the member by Seair will be considered as

confidential, and will be utilized by the member solely for the purpose of credit evaluation.

The above credit information provided to a member by petitioner is given orally. However, members also receive a bulletin issued biweekly. The bulletin contains a listing of delinquent accounts, the amount, and any action taken. It also lists changes from previous bulletins.

6. Petitioner argued that it does not provide credit reports either orally or in written form as the term is generally defined in the business community and that the information provided is personal and individual in nature since such information is available only to members for the exclusive use of the member. Petitioner, therefore, concluded that its services are not subject to tax under section 1105(c)(1) of the Tax Law. In the alternative, petitioner argued that credit information is only furnished orally since the bulletin is not a written credit report and therefore, its membership dues are subject only to the New York City local tax.

7. Petitioner did not remit the sales tax of \$133.80 referred to above because the customer refused to pay the same. The creditor was located in New York City.

8. In 1977, petitioner overpaid New York State and New York City withholding taxes of \$760.95. The resulting refund was applied to the sales tax liability at issue.

9. Petitioner acted in good faith at all times and did not willfully attempt to evade the tax.

CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law imposes a sales tax on the service of "the furnishing of information by printed matter..., including the

services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially in reports furnished to other persons....".

That the credit information furnished by petitioner in the bulletin referred to in Finding of Fact "5" constitutes an information service within the meaning and intent of said section of the Tax Law; that credit reports furnished orally are not subject to the tax imposed by section 1105(c)(1) of the Tax Law, however, are subject to the local tax imposed by New York City pursuant to section 1212-A(h)(2)(i)(A) of the Tax Law. The membership dues charged by petitioner entitle a member to both written and oral reports and therefore, the entire charge is subject to the taxes imposed under section 1105(c)(1) and 1210 of the Tax Law.

B. That petitioner is liable for the tax of \$133.80 in accordance with the provisions of section 1133(a) of the Tax Law regardless of whether the tax was paid by the customer.

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

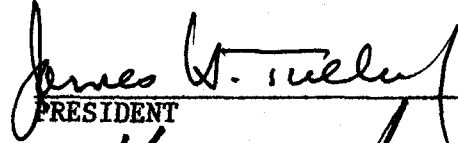
D. That the petition of Seair Consultants, Inc. is granted to the extent indicated in Conclusion of Law "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 8, 1978 and credit petitioner with its payment of

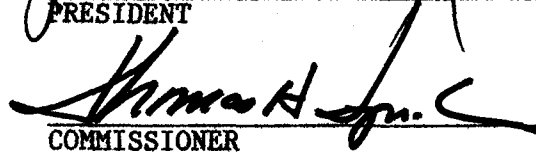
\$760.95; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

JUL 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER