

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wellsville Daily Reporter, Inc. (Seller) :
W.H. Greenhow Co. (Purchaser) :
: 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 5/31/70 - 8/31/72. :

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Wellsville Daily Reporter, Inc. (Seller), W.H. Greenhow Co. (Purchaser), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Wellsville Daily Reporter, Inc. (Seller)
W.H. Greenhow Co. (Purchaser)
159 N. Main St.
Wellsville, NY 14895

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
21st day of August, 1981.

Annie R. Hageland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wellsville Daily Reporter, Inc. (Seller) :
W.H. Greenhow Co. (Purchaser) :
: 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 5/31/70 - 8/31/72.

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon David A. Shults the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David A. Shults
Shults & Shults
9 Seneca St.
Hornell, NY 14843

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
21st day of August, 1981.

Annie R. Haglund

J. Vredenburg

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

August 21, 1981

Wellsville Daily Reporter, Inc. (Seller)
W.H. Greenhow Co. (Purchaser)
159 N. Main St.
Wellsville, NY 14895

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
David A. Shults
Shults & Shults
9 Seneca St.
Hornell, NY 14843
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wellsville Daily Reporter, Inc. (Seller) :
W.H. Greenhow Co. (Purchaser) :
: 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 5/31/70 - 8/31/72. :

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 14th day of August, 1981, he served the within notice of Decision by mail upon Wellsville Daily Reporter, Inc. (Seller), W.H. Greenhow Co. (Purchaser), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Wellsville Daily Reporter, Inc. (Seller)
W.H. Greenhow Co. (Purchaser)
159 N. Main St.
Wellsville, NY 14895

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
14th day of August, 1981.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Wellsville Daily Reporter, Inc. (Seller) :
W.H. Greenhow Co. (Purchaser) :
: 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 5/31/70 - 8/31/72.

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 14th day of August, 1981, he served the within notice of Decision by mail upon David A. Shults the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David A. Shults
Shults & Shults
9 Seneca St.
Hornell, NY 14843

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
14th day of August, 1981.

Cornie A. Hagelund

J. Vredenburg

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

August 14, 1981

Wellsville Daily Reporter, Inc. (Seller)
W.H. Greenhow Co. (Purchaser)
159 N. Main St.
Wellsville, NY 14895

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
David A. Shults
Shults & Shults
9 Seneca St.
Hornell, NY 14843
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
WELLSVILLE DAILY REPORTER, INC. (SELLER)	:	DECISION
and W. H. GREENHOW CO. (PURCHASER)	:	
	:	
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 March 1, 1970	:	
through August 31, 1972.	:	

Petitioners, Wellsville Daily Reporter, Inc. and W. H. Greenhow Co., 159 North Main Street, Wellsville, New York 14895, 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 March 1, 1970 through August 31, 1972 (File Nos. 00046 and 00047).

On July 10, 1980, petitioners advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and submitted the case to the State Tax Commission based upon the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the sale of a "newspaper morgue" is subject to tax.

FINDINGS OF FACT

1. During the period at issue, petitioner, Wellsville Daily Reporter, Inc., was engaged in newspaper publishing. On or about July 20, 1972, the business was sold to W. H. Greenhow Co. Wellsville remitted a bulk sales tax of \$600.00 on the sale of furniture and fixtures for \$10,000.00.

2. On May 4, 1973, 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 petitioners Wellsville Daily Reporter, Inc. (seller) and W. H. Greenhow Co. (purchaser) covering the period March 1, 1970 through August 31, 1972 for taxes due of \$1,392.04, plus penalty and interest of \$249.15, for a total of \$1,641.19. At issue herein is the additional bulk sales tax of \$660.00 asserted on the sale of daily newspaper files known as a "newspaper morgue".

3. A "newspaper morgue" is a file of daily newspapers bound in hard cover and represents historical data used for reference purposes. The morgue contained over forty years of newspapers.

4. The Evening Tribune, a newspaper published by W. H. Greenhow and Co. has a column appearing daily entitled "25 Years Ago Today" which summarizes the news that happened 25 years prior to the date of publication. The newspaper morgue is the sole source of the information contained in this column. The morgue is also used by reporters and writers in the course of their research for other articles for the newspaper.

5. Petitioners' position is that the "newspaper morgue" is not subject to tax on the grounds that; 1) it is an information service used in the dissemination of news, excluded from tax under section 1105(c)(1) of the Tax Law, 2) newspapers are specifically exempt under section 1115(a)(5) of the Tax Law, and 3) it qualifies as production machinery or equipment under section 1115(a)(12) of the Tax Law.

6. Reasonable cause exists for the abatement of penalty and interest.

CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law imposes a sales tax on receipts from the sale of furnishing information by printed, mimeographed or multi-

graphed matter, including the services of collecting, compiling or analyzing information of any kind or nature but excludes information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news. That the "newspaper morgue" described in Finding of Fact "3" does not constitute the furnishing of an information service within the meaning and intent of said section of the Tax Law and therefore petitioner is not afforded the exclusion from tax provided therein.

B. That section 1115(a)(5) of the Tax Law provides an exemption for newspapers from the tax imposed under sections 1105(a) and 1110 of the Tax Law. However, a newspaper, as a component of bound reference material, is not a "newspaper" within the meaning and intent of section 1115(a)(5) of the Tax Law.

That section 1115(a)(12) of the Tax Law exempts machinery or equipment for use or consumption directly and predominantly (directly and exclusively during period at issue) in the production of tangible personal property for sale. That the "newspaper morgue" is not machinery or equipment within the meaning and intent of said section of the Tax Law.

C. That the sale of the "newspaper morgue" used in connection with the publication of a newspaper constituted a sale of tangible personal property and therefore subject to the tax imposed under section 1105(a) of the Tax Law.

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

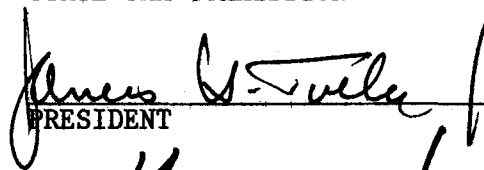
E. That the petitions of Wellsville Daily Reporter, Inc. and W. H. Greenhow Co. are granted to the extent indicated in Conclusion of Law "D"; that the Audit Division is hereby directed to modify the Notice of Determination

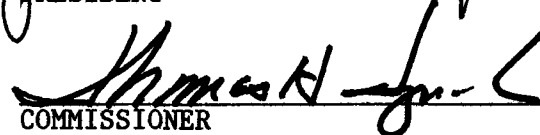
and Demand for Payment of Sales and Use Taxes Due issued May 4, 1973; and that, except as so granted, the petitions are in all other respects denied.


DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER