

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Zander Associates, 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:  
9/1/72 - 8/31/76.

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 Zander Associates, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

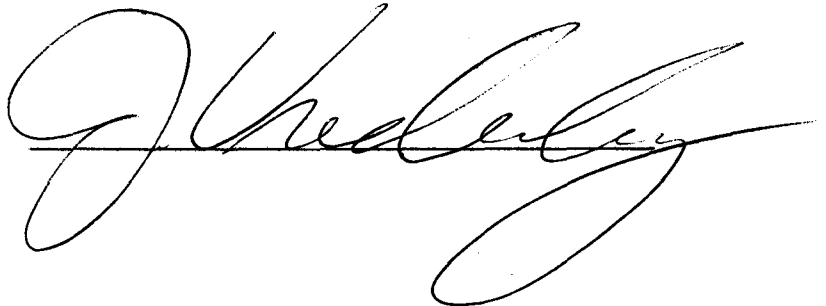
Zander Associates, Inc.  
285 Madison Ave.  
New York, NY 10017

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.





STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Zander Associates, 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 9/1/72 - 8/31/76.

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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 Stanley Friedenbergl the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley Friedenbergl  
122 E. 42nd St.  
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office mail 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.

Cornie A. Hagelund

J. Vredenburg

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

October 9, 1981

Zander Associates, Inc.  
285 Madison Ave.  
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  
Stanley Friedenberg  
122 E. 42nd St.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ZANDER ASSOCIATES, 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 September 1, 1972  
through August 31, 1976.

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Petitioner, Zander Associates, Inc., 285 Madison Avenue, New York, New York 10017, 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 September 1, 1972 through August 31, 1976 (File No. 23875).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 14, 1980, at 1:15 P.M. Petitioner appeared by Stanley Friedenber, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether purchases by petitioner of artwork, stills, stats, storyboard and design work are taxable under section 1105(a) and/or 1110(A) of the Tax Law.

FINDINGS OF FACT

1. On September 20, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Zander Associates, Inc. for the period September 1, 1972 through August 31, 1976 in the amount of \$7,519.24 tax, plus penalties and interest. The Notice was issued as a result of a field audit.

2. Petitioner executed consents extending the period of limitation for assessment for the periods in issue to September 20, 1977.

3. Petitioner produces animated commercial films for use in television commercials. In most instances, petitioner's clients were advertising agencies. The production process involved the transforming of a commercial message prepared by the advertising agency into an animated film to be shown on television.

In the initial stage of production, petitioner would on occasion hire an outside artist to prepare a storyboard or design, which are ideas or the visualization on paper of the script or characters of the commercial. Upon approval, initial artwork was then prepared by the artist and sent to petitioner. The artwork was then translated onto acetate cells by a photocopy machine. To create the movement of characters, it could take as many as 770 pieces of artwork to produce one minute of running time of film. The acetate cells were colored by employees of petitioner according to the artist's instructions. Once inked in, the cells and a background (still or stat) were photographed in sequence by an animation camera. The resultant film is the finished product and a master copy of such film is delivered to the client. Once the finished product is completed, the artwork, stills and stats, and storyboard and design are packaged and delivered to the customers' storage facilities in New Jersey.

4. It was the Audit Division's position that the purchase of artwork, design, storyboard, stills and stats did not become a physical component part of the film produced and, therefore, were taxable under sections 1105(a) and/or 1110(A) of the Tax Law as supplies used in production. In support of its position, it cited an opinion of Counsel dated March 10, 1967 where artwork used in live action film production was deemed to be a supply. The Audit Division determined total taxable purchases of \$97,594.82 and the use tax due

thereon of \$7,375.14. It also determined a use tax due of \$144.10 on fixed assets which is not at issue.

5. Based on additional information submitted at a conference, the Audit Division conceded to a reduction of additional tax due to \$6,409.16 plus applicable minimum interest.

6. The artwork, including stills and stats, and design work, was not altered from the original drawing or photograph. The image drawn by the artist on such artwork was transferred to the film, though the paper the artwork was drawn on did not become a physical part of the film.

7. Petitioner offered no contracts or other evidence showing when title to the production elements passed to the customer.

#### CONCLUSIONS OF LAW

A. That the purchases of artwork, stills, stats, storyboard and design by petitioner were purchases for use by petitioner in its production of animated commercial films; therefore, they were not purchases for resale within the meaning and intent of section 1101(b)(4) of the Tax Law.

B. That the artwork, stills, stats, storyboard and design constitute equipment used directly and exclusively in the production of animated commercial films; therefore, purchases thereof are exempt from the New York State sales and use tax in accordance with section 1115(a)(12) of the Tax Law. Said items are subject only to the New York City local tax pursuant to section 1210(a)(1) of the Tax Law. Matter of Harrison Services, Inc., STC January 16, 1981.

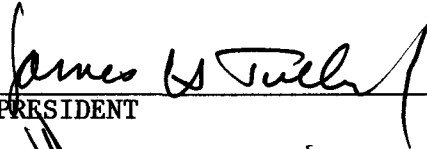
C. That the petition of Zander Associates, Inc. is granted to the extent indicated in Conclusion "B" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales


and Use Taxes Due issued September 20, 1977 together with minimum interest; and that, except as so granted, the petition is in all other respects denied.

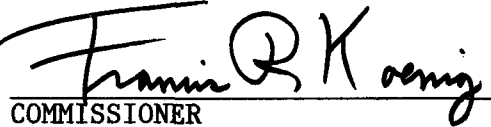
DATED: Albany, New York

OCT 09 1981

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER