

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Camera 73, 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 9/1/74 - 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 22nd day of October, 1982, he served the within notice of Decision by certified mail upon Camera 73, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Camera 73, Inc.
c/o Celia Freedman
325 East 73rd St.
New York, NY 10021

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
22nd day of October, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 22, 1982

Camera 73, Inc.
c/o Celia Freedman
325 East 73rd St.
New York, NY 10021

Dear Ms. Freedman:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

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	:	
	:	
CAMERA 73, 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, 1974	:	
through August 31, 1977.	:	

Petitioner, Camera 73, Inc., 325 East 73rd Street, New York, New York 10021, 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, 1974 through August 31, 1977 (File No. 22423).

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 November 17, 1981 at 2:45 P.M. Petitioner appeared by Celia Freedman, Secretary-Treasurer. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner's rental of props and purchases of art supplies constituted purchases for resale to its customers.

II. Whether petitioner rented props and purchased art supplies as an agent for its customers.

FINDINGS OF FACT

1. Petitioner, Camera 73, Inc., photographs, designs, builds and decorates background settings for the production of a photographic layout of certain products for advertising agencies.

2. On May 22, 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 covering the period September 1, 1974 through August 31, 1977 for taxes due of \$1,919.60, plus minimum statutory interest of \$367.93, for a total of \$2,287.53.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period at issue, to December 20, 1978.

4. On audit, the Audit Division examined petitioner's purchase invoices for the entire audit period and found that petitioner failed to pay a sales or use tax on prop rentals amounting to \$20,778.00 and purchases of art supplies of \$3,217.00.

The Division determined that petitioner was the final user of such purchases and therefore such transactions constituted retail sales.

Petitioner took the position that props and art supplies are for resale since they are an intrinsic part of the job and moreover, that the purchases were made for the customer under a principal-agent relationship.

5. The purchases at issue were used by petitioner in background settings for a photograph.

Petitioner collects sales tax on the total amount charged to the customer for the photograph produced, including separately stated charges for set design and construction, prop rentals, model fees, trucking and messenger service. The amount charged to the customer for prop rentals is reimbursement for the actual expense incurred by petitioner. The customer has the right to approve or disapprove the props selected by petitioner and in some instances

the customer will make their own selections. In either case, the rental charge is billed to petitioner.

CONCLUSIONS OF LAW

A. That the props and art supplies were used by petitioner in the production of photographs and were not purchased for resale as such or as a physical component part of tangible personal property within the meaning and intent of section 1101(b)(4) of the Tax Law. Therefore, said purchases are subject to the tax imposed under section 1105(a) of the Tax Law and petitioner is accordingly liable for such taxes pursuant to section 1133(b) of the Tax Law.

B. That the rental of props and purchases of art supplies were billed to and paid by petitioner and were for the sole use by petitioner. Accordingly, petitioner did not make such purchases as agent on behalf of a principal.

C. That the petition of Camera 73, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 22, 1978 is sustained.

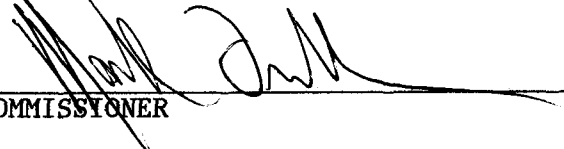
DATED: Albany, New York

OCT 22 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER