

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
International Security Bureau, Inc. :
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 9/1/75-8/31/78. :
_____ :

AFFIDAVIT OF MAILING

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 December, 1982, he served the within notice of Decision by certified mail upon International Security Bureau, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

International Security Bureau, Inc.
1050 Franklin Ave., Suite 410
Garden City, NY 11530

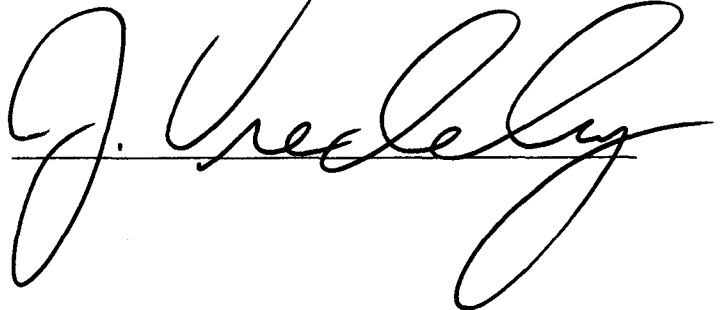
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
International Security Bureau, 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 :
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State of New York
County of Albany

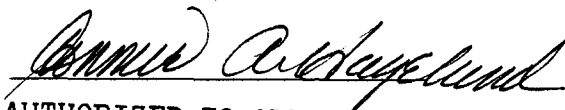
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of December, 1982, he served the within notice of Decision by certified mail upon Bernard Extract the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bernard Extract
Lubin, Zabell & Extract
250 W. 57th St.
New York, NY 10019

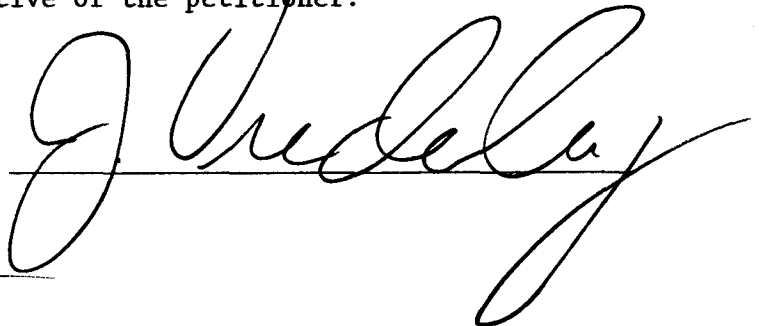
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 14, 1982

International Security Bureau, Inc.
1050 Franklin Ave., Suite 410
Garden City, NY 11530

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 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
Bernard Extract
Lubin, Zabell & Extract
250 W. 57th St.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
INTERNATIONAL SECURITY BUREAU, 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, 1975 :
through August 31, 1978.

Petitioner, International Security Bureau, Inc., 1050 Franklin Avenue, Suite 410, Garden City, New York 11530, 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, 1975 through August 31, 1978 (File No. 25746).

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 February 2, 1982, at 2:45 P.M. Petitioner appeared by Bernard Extract, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUE

Whether expenses incurred on behalf of petitioner's clients in the performance of investigative services and separately billed its customers are receipts subject to tax under section 1212-A of the Tax Law.

FINDINGS OF FACT

1. On February 13, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against International Security Bureau, Inc. covering the period September 1, 1975 through August 31, 1978. The Notice asserted additional sales tax due of \$6,485.94 plus penalty

and interest of \$3,011.17 for a total due of \$9,497.11 as a result of a field audit.

2. On November 27, 1978, petitioner executed a consent to extend the period of limitation for the issuance of an assessment to December 20, 1979.

3. On audit, the Audit Division found that petitioner separately billed its customers for expenses incurred such as travel, lodging, meals and photographs in the performance of investigative services. Petitioner did not collect New York City sales tax on that portion of its billings. The Audit Division determined from the books and records of petitioner that total charges in the audit period for investigative services and expenses billed to New York City clients were \$608,353.36. Petitioner reported taxable sales to New York City clients of \$446,205.00 on New York State and Local Sales and Use Tax Returns and Schedule N of such returns. The Audit Division thereby determined additional taxable sales of \$162,148.36 and the tax due thereon of \$6,485.94.

4. It was the Audit Division's position that all charges petitioner billed its clients were receipts taxable under section 1212-A(h)(2)(i)(B) of the Tax Law. In support of its position, the Audit Division cited 1101(b)(3) of the Tax Law defining "receipt" and 20 NYCRR 526.5(e) which discusses elements of a receipt.

5. Petitioner argued that it properly collected and remitted sales tax on that portion of its billings for investigative services billed to New York City clients. Petitioner billed its clients, on a dollar for dollar basis, the cost of expenses as they occurred without any profit thereon. Petitioner therefore contended that these billings were not taxable receipts but merely a reimbursement of the expenses incurred on behalf of the client in the performance of the investigative services rendered.

6. Petitioner did not raise as an issue the application of penalty or interest.

CONCLUSIONS OF LAW

A. That section 1212-A(h)(2)(i)(B) of the Tax Law authorizes the imposition of sales tax upon the receipts from every sale of detective services.

B. That section 1101(b)(3) of the Tax Law defines "receipt" as the amount of the sale price of any property and the charge for any service taxable under Articles 28 and 29, without any deduction for expenses. That 20 NYCRR 526.5(e), in discussing elements of a receipt, states that all expenses incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are (separately) billed to a customer are not deductible from the receipts.

C. That the portion of receipts billed by petitioner as expenses incurred in the performance of investigative services cannot be excluded from the total receipts subject to tax. The entire billing, including the reimbursement of expenses incurred by petitioner, was the sales price paid by petitioner's clients for investigative services and was therefore subject to tax under section 1212-A of the Tax Law. That there is no requirement in the Tax Law that a profit be made on a particular transaction or service before it is taxable (Sperry Rand v. Tully, 99 Misc. 2d at 719).

D. That the petition of International Security Bureau, Inc. is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes

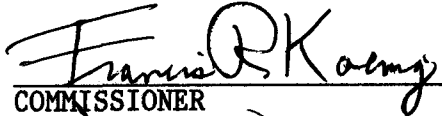
Due issued February 13, 1979 is sustained with applicable penalty and interest thereon.

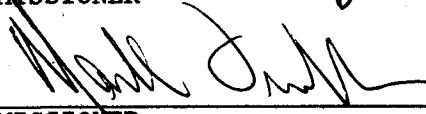
DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER