

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
McGraw Hill, 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 Years :
1969 - 1973. :

State of New York
County of Albany

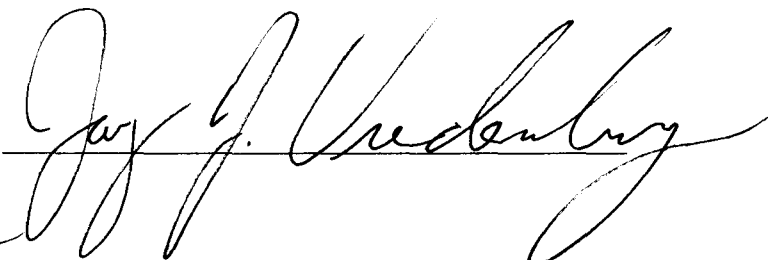
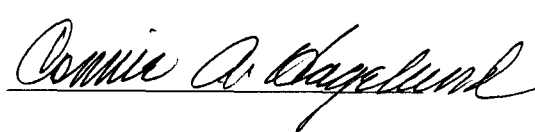
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of April, 1982, he served the within notice of Decision by certified mail upon McGraw Hill, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

McGraw Hill, Inc.
c/o John L. Cady
1221 Avenue of the Americas
New York, NY 10036

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
30th day of April, 1982.

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

April 30, 1982

McGraw Hill, Inc.
c/o John L. Cady
1221 Avenue of the Americas
New York, NY 10036

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
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	:	
	:	
McGRAW-HILL, 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,	:	
1969 through August 31, 1973.	:	

Petitioner, McGraw-Hill, Inc., 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, 1969 through August 31, 1973 (File No. 12872).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on February 16, 1977, at 9:15 A.M. Petitioner appeared by John L. Cady, Senior Vice President. The Audit Division appeared by Peter Crotty, Esq. (Alfred Rubenstein, Esq., of counsel).

ISSUE

Whether petitioner's newsletters, represented by Exhibits A through L attached to the stipulation entered herein, were exempt from sales and use taxes as "periodicals", within the meaning of section 1115(a)(5) of the Tax Law, and further, not subject to tax as "information services" within the meaning of section 1105(c)(1) of the Tax Law.

FINDINGS OF FACT

1. On November 28, 1975, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, against petitioner, McGraw-Hill, Inc., for the period September 1, 1969 through August 31, 1973,

for a deficiency of taxes due of \$1,064,143.84, together with penalty and interest thereon of \$531,556.14, for a total assessment of \$1,595,699.98. Petitioner had paid \$150,000.00 towards said tax assessment, leaving a balance of tax assessment allegedly due of \$1,445,699.98.

2. Petitioner timely filed, by letter dated February 17, 1976, a request for a formal hearing to seek redetermination of the deficiency assessment stated in the aforesaid notice which letter was accepted in lieu of a formal petition.

3. By written stipulation submitted herein, it was agreed by and between the parties that the items assessed for sales and use taxes allegedly due, as stated in the Audit Division's notice be reduced as to some of those items, for which it was agreed no sales or use taxes were due, and that the notice be adjusted accordingly, as follows:

<u>STIPULATION REFERENCE</u>	<u>ORIGINAL DEFIC.</u>	<u>ADJUSTED DEFIC.</u>
Paragraph 1, pg. 2	\$ 11,184.47	\$ 2,035.44
Paragraph 2, pp. 2-3	37,850.33	37,850.33
Paragraph 3, pg. 3	14,102.08	-0-
Paragraph 4, pg. 3	50,728.35	40,582.00
Paragraph 5, pg. 3	51,126.71	25,563.35
Paragraph 6, pg. 3	79,426.45	79,426.45 *
Paragraph 7, pg. 4	5,411.45	294.18
Paragraph 8, pp. 4-8	440,267.00	48,907.00
Paragraph 9, pp. 8-13	359,284.00	52,129.00
Paragraph 10, pp. 13-15	14,763.00	7,971.00

* This deficiency allegedly due was stipulated as to the facts but disputed as to its taxability on the law, which is the issue as previously stated herein, and will be taken up later in this decision.

Total Original Defic.: \$1,064,143.84

Total Adjusted Deficiency \$294,758.75

INTEREST AND PENALTY

\$553,355.00

ADJUSTED

Penalty and Interest reduced to minimum statutory interest computed from applicable due dates to date of reassessment herein.

4. That accordingly, pursuant to this stipulation entered herein, it is established that the proposed deficiency of \$1,064,143.84, as set forth in the notice herein, be reduced to \$294,758.75, and that the proposed interest and penalty as set forth in the notice as \$531,556.14, erroneously set forth as \$553,355.00 in the stipulation, be reduced to minimum statutory interest computed from the due dates to the date of reassessment herein; that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due be adjusted accordingly, and that the item of \$79,426.45, for sales of petitioner's newsletters, as to its taxability, be determined in accordance with the decision as hereinafter set forth.

5. That as to the remaining item upon which the facts were stipulated as to amount and nature of item as a newsletter (See Stipulation, Page 3, para. 6, supra.), representative samples of which are annexed to the stipulation as Exhibits A through L inclusive, it was further stipulated that the newsletter items have the following characteristics (Stip., para. 5 through 10 inclusive):

a. Each...is published at stated intervals, at least as frequently as four times a year.

b. Each...has the element of general availability to the public.

c. Each...has continuity of title and general nature of content from issue to issue.

d. Each...meets the requirement that a publication seeking to qualify as a periodical must not, either singly or, when successive issues are put together, constitute a book. If a customer elects to spend the money to have a number of issues bound together, he could create a book; but that is equally true of Time magazine and countless other publications which clearly qualify as periodicals.

e. Each...is written by more than one author and contains a variety of articles or "items" devoted to some special industry, profession, or other field of endeavor.

6. That accordingly, the stipulated facts show that these newsletters come within the definition of a "periodical" provided for in the Opinion of Counsel of the Audit Division, interpreting the "periodical" exemption from Sales and Use Tax under section 1115(a)(5) of the Tax Law, which adopted for said definition Article 53(1) of the New York City (Tax) Regulations, as binding.

7. That Exhibit A is the newsletter The Business Week; Exhibit B, Nucleonics Week; Exhibit C, NPN Bulletin; Exhibit D, Career Education News; Exhibit E, Keystone News Bulletin; Exhibit F, Washington Report on Long Term Care; Exhibit G, Washington Report on Medicine & Drugs; Exhibit H, Washington Drug & Device Letter; Exhibit I, Platt's Oilgram News Service; Exhibit J, Platt's Oilgram Price Service; Exhibit K, Electrical Week; and Exhibit L, Metals Week.

8. That an examination of the representative newsletters under question herein as to liability for Sales and Use Tax reveals that they constitute financial news and other information of an informative nature given to private subscribers within this State, presumably to that sector of the general public interested in such news and information for their investment or business purposes.

CONCLUSIONS OF LAW

A. That section 1115(a)(5) provides for exemption from the sales and use tax for "newspapers and periodicals".

B. That by the stipulation of facts entered herein, it has been established that petitioner's newsletters in question meet the definitional criteria of "periodicals" within the meaning of section 1115(a)(5) of the Tax Law.

C. That section 1105(c)(1) provides for the imposition of tax on the service of furnishing information by printed, mimeographed or multigraphed matter.

D. That petitioner's newsletters are not the type of information services intended to be taxed by section 1105(c)(1). That publications which the State Tax Commission has held taxable as information services include credit reports, multiple listing reports and mailing lists. (see: Auburn Credit Bureau, Inc., State Tax Commission, October 9, 1979; Rensselesar County Board of Realtors, Inc., State Tax Commission, April 23, 1976; Alan Drey Company, Inc. v. State Tax Commission, 67 A.D.2d 1055). That petitioner's publications are more akin to popular magazines such as Business Week and Forbes.

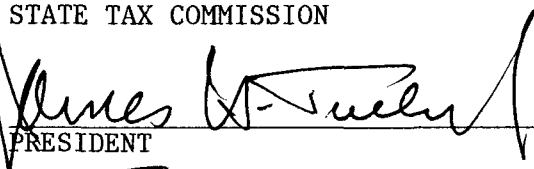
E. That accordingly, the newsletters of petitioner are exempt periodicals within the meaning of section 1115(a)(5), and further, not subject to tax as "information services" within the meaning of section 1105(c)(1) of the Tax Law. That the deficiency assessed by the Audit Division in the determination, amounting to \$79,426.45 is cancelled.

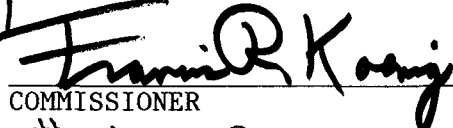
F. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is hereby adjusted to \$215,332.30 (\$294,758.75 - \$79,426.45) with simple interest added thereon from the applicable dates when the tax was due, to the date of reassessment. Except as so granted, the petition of McGraw-Hill, Inc. is in all other respects denied.

DATED: Albany, New York

APR 30 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER