

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

August 10, 1983

Credit Bureau of Greater Syracuse
and Central New York, Inc.
107 University Bldg.
Syracuse, NY 13202

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Thomas J. Valenti
Bond, Schoeneck & King
One Lincoln Center
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CREDIT BUREAU OF GREATER SYRACUSE	:	DECISION
AND CENTRAL NEW YORK, INC.	:	
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 May 31, 1977.	:	

Petitioner, Credit Bureau of Greater Syracuse and Central New York, Inc., 107 University Building, Syracuse, New York 13202, 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 May 31, 1977 (File No. 24146).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on March 26, 1982 at 9:00 A.M. Petitioner appeared by Thomas J. Valenti, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether membership fees paid to petitioner for the right to purchase credit information are subject to sales tax.

II. Whether telephone and telegraph expenses charged by petitioner to customers in connection with furnishing credit information are subject to sales tax.

FINDINGS OF FACT

1. Petitioner, Credit Bureau of Greater Syracuse and Central New York, Inc. is engaged in providing oral and written credit information to members and other credit bureaus. Members consist primarily of businesses that extend credit (i.e. retail stores, lending institutions and credit card companies).

2. On July 31, 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 May 31, 1977 for taxes due of \$32,536.67, plus minimum statutory interest of \$6,356.27, for a total of \$38,892.94.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period September 1, 1974 through May 31, 1975, to September 20, 1978.

4. On audit, the Audit Division reviewed monthly operating statements which showed a complete breakdown of income by category. The following income accounts were held to be taxable:

a) report income	\$ 370,123.00
b) membership dues	85,647.00
c) out of town CBR	67,219.00
d) sales aids	6,016.00
e) telephone & telegraph	13,494.00
f) personal reports	7,912.00
g) miscellaneous income	24,564.00
h) public records	88,642.00
i) advertising income	4,400.00
j) promotional sales	55,839.00
k) gracious lady	22,113.00
l) direct line service	120.00
m) terminal rental	347,701.00
TOTAL	\$1,093,790.00

Petitioner reported taxable sales of \$651,103.00 and paid sales taxes thereon of \$45,584.35, which resulted in additional taxes due of \$30,980.95.

The Division also asserted use taxes due of \$1,555.72 on computer equipment rented by petitioner from an out-of-state vendor.

5. Following a pre-hearing conference, petitioner executed a Withdrawal of Petition and Discontinuance of Case on which \$18,536.74 of the above tax deficiency was cancelled. The unresolved portion, \$13,999.93 is comprised of tax due on membership dues, telephone and telegraph, miscellaneous income (\$22,611.00), promotional sales and gracious lady.

At the hearing, counsel for both parties stipulated that \$14,111.00 of the miscellaneous income account and \$68,585.60 of the combined promotional sales and gracious lady accounts were subject to tax.

6. Petitioner's standard application for membership and service contract provided that for the sum of \$7.50 per month, the applicant is to receive full membership. A member was entitled to order any number of oral and written reports. The membership dues did not entitle a member to any free reports or to reduced charges on reports. Credit information is not given to non members.

7. Under certain circumstances petitioner is requested to expedite the furnishing of credit information. This requires petitioner to incur additional telephone or telegraph expenses. Petitioner charges the customer for such expense separately from the charge for the credit report. Petitioner did not collect tax on the aforesaid telephone or telegraph charges.

CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law, in pertinent part, imposes a sales tax on the service of furnishing information by printed matter..., including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons. That 20 NYCRR 527.3(a)(4) provides that:

"Charges for credit information services, other than those that are transmitted orally, are subject to tax. The following rules shall apply in determining taxability of services that include both oral and written reports.

- (i) Any fee for a written report is taxable.
- (ii) Any fee for an oral report is taxable if the oral report is preliminary to the written report.
- (iii) An annual fee for subscribing to a service is taxable if it entitles the subscriber to a certain number of free reports or to reduced charges on reports, unless the subscriber is entitled only to oral reports".

B. That the membership fees charged by petitioner entitles the member to purchase both oral and written reports and therefore, the dues are subject to tax in accordance with the meaning and intent of section 1105(c)(1) of the Tax Law and 20 NYCRR 527.3(a)(4).

C. That 20 NYCRR 526.5(e) provides that all expenses incurred by a vendor in making a sale regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

That the telephone or telegraph expenses incurred by petitioner and passed on in a separate charge to the customer constitute an element of the sales price for the credit information service. The taxability of such charges depends on whether petitioner furnished an oral or written report. Petitioner failed to establish which telephone or telegraph charges, if any, are applicable to oral reports only and therefore, all such charges are deemed taxable in accordance with section 1132(c) of the Tax Law.

D. That the additional taxable sales shall be adjusted in accordance with the stipulation set forth in Finding of Fact "5".


E. That the petition of Credit Bureau of Greater Syracuse and Central New York, Inc. is 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 July 31, 1978; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 10 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Credit Bureau of Greater Syracuse
and Central New York, 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 - 5/31/77.

State of New York
County of Albany

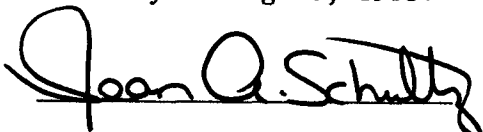
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of August, 1983, she served the within notice of Decision by certified mail upon Credit Bureau of Greater Syracuse and Central New York, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Credit Bureau of Greater Syracuse
and Central New York, Inc.
107 University Blg.
Syracuse, NY 13202

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
10th day of August, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Credit Bureau of Greater Syracuse :
and Central New York, 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 - 5/31/77.

State of New York
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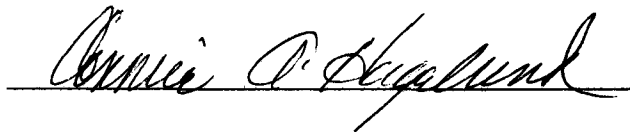
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of August, 1983, she served the within notice of Decision by certified mail upon Thomas J. Valenti the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

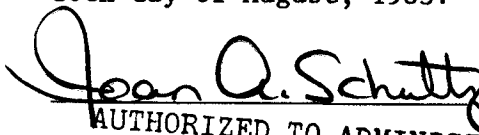
Thomas J. Valenti
Bond, Schoeneck & King
One Lincoln Center
Syracuse, NY 13202

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
10th day of August, 1983.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 481 208 157

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Credit Bureau of Greater Syracuse and Central NY	
Street and No. 107 University Bldg	
P.O., State and ZIP Code Syracuse, NY 13202	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 208 158

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Thomas J. Valenti	
Bond, Schoeneck + King	
Street and No. One Lincoln Center	
P.O., State and ZIP Code Syracuse, NY 13202	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982