

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

May 27, 1983

Koch Graphics, Inc.
250 Hudson St.
New York, NY 10013

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
Egal Shasho
2416 National Dr.
Brooklyn, NY 11234
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Koch Graphics, 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 12/1/75-5/31/80. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Koch Graphics, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Koch Graphics, Inc.
250 Hudson St.
New York, NY 10013

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
27th day of May, 1983.

David Parchuck

Amie A. Heyland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Koch Graphics, 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 12/1/75-5/31/80. :
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Egal Shasho the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Egal Shasho
2416 National Dr.
Brooklyn, NY 11234

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
27th day of May, 1983.

David Parchuck

William P. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
KOCH GRAPHICS, INC. : DECISION
for Revision of Determinations or for Refund :
of Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Period December 1, 1975 :
through May 31, 1980.

Petitioner, Koch Graphics, Inc., 250 Hudson Street, New York, New York 10013, filed a petition for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1975 through May 31, 1980 (File No. 33744).

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 December 7, 1982 at 10:45 A.M. Petitioner appeared by Egal Shasho. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether plates, film and stripping materials were purchases for resale to petitioner's customers within the meaning and intent of section 1101(b)(4)(i) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Koch Graphics, Inc., is engaged in the printing of brochures and similar advertising materials for other printers and printing brokers.
2. On March 20, 1981, as the result of an audit, the Audit Division issued notices of determination and demand for payment of sales and use taxes

due against petitioner covering the periods December 1, 1975 through May 31, 1979 and June 1, 1979 through May 31, 1980 for taxes due of \$13,507.04 and \$8,323.68, respectively, plus applicable interest.

3. The audit performed by the Audit Division held petitioner liable for the New York City local tax of \$21,830.72 on purchases of plates, film and stripping materials which totaled \$545,768.00 during the period under audit. The Audit Division took the position that the plates, film and stripping constituted production equipment under section 1115(a)(12) of the Tax Law and as such, are exempt from the New York State sales tax but are subject to the New York City local tax pursuant to section 1210(a)(1) of the Tax Law.

4. The plates, film and stripping are used by petitioner in its production of printed matter. Upon completion of the work, the plates, film and stripping become the property of petitioner's customer (a printer or broker). The customer can take possession of such items at the same time as the printed matter or petitioner will store the plates as a courtesy to its customers.

Petitioner's price to the customer reflected a charge for the plates, film and stripping, however, such amounts were not shown separately on the customer's invoice.

5. Petitioner did not sell to the ultimate user of the printed material but rather to another printer or a broker who sold to the consumer. Petitioner thus concluded that the plates, film and stripping were for "resale" along with the completed printed advertising and that the appropriate sales tax would be collected when sold by its customers to the ultimate purchaser.

CONCLUSIONS OF LAW

A. That the plates, film and stripping were used by petitioner in its printing process prior to any transfer of title or possession thereto and that

such use precluded petitioner from purchasing said items for resale within the meaning and intent of section 1101(b)(4)(i) of the Tax Law (Matter of Baronet Lithograph Co., State Tax Commission, August 25, 1978; Matter of Harrison Services, Inc., State Tax Commission, January 16, 1981).


That the primary purpose of the plates, film and stripping was not of reselling them to its customers but rather for petitioner's use as indicated above and any resale thereof was purely incidental (Matter of Laux Advertising, Inc. v. State Tax Commission, 67 A.D. 2d 1066, Matter of Cut-Outs, Inc. v. State Tax Commission, 85 AD 2d 838).


B. That the petition of Koch Graphics, Inc. is denied and the notices of determination and demand for payment of sales and use taxes due issued March 20, 1981 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Koch Graphics, Inc.</i>	
Street and No. <i>250 Hudson St.</i>	
P.O., State and ZIP Code <i>New York, NY 10013</i>	
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 481 207 831

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Egal Shasho</i>	
Street and No. <i>2416 National Dr.</i>	
P.O., State and ZIP Code <i>Brooklyn, NY 11234</i>	
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