

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

September 28, 1983

Mature Picture Corp.
356 W. 44th St.
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 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
Donald L. Bunsis
2631 Merrick Rd.
Bellmore, NY 11710
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mature Picture Corp. : 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 9/1/73 - 11/30/75. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Mature Picture Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mature Picture Corp.
356 W. 44th St.
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
28th day of September, 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

Mature Picture Corp. : 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 9/1/73 - 11/30/75.

State of New York
County of Albany

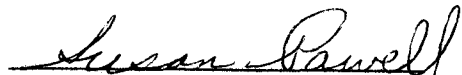
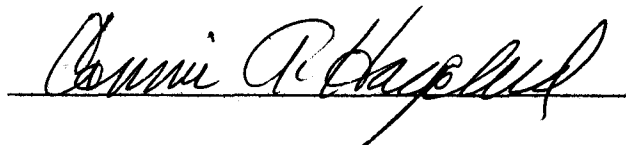
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Donald L. Bunsis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald L. Bunsis
2631 Merrick Rd.
Bellmore, NY 11710

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
28th day of September, 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 :
MATURE PICTURE CORP. : 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 December 1, 1971 :
through November 30, 1975. :
:

Petitioner, Mature Picture Corp., 356 West 44th Street, New York, New York 10036, 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 December 1, 1971 through November 30, 1975 (File No. 17818).

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 January 25, 1980 at 9:15 A.M. Petitioner appeared by Donald L. Bunsis, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

- I. Whether the purchase of distribution rights to motion pictures is subject to tax.
- II. Whether the Audit Division timely assessed additional taxes for the period March 1, 1972 through May 31, 1972.

FINDINGS OF FACT

1. Petitioner, Mature Picture Corp., is engaged in the distribution of motion picture films.
2. Petitioner timely filed New York State and local sales and use tax returns for the period at issue.

3. On March 18, 1976 the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period December 1, 1971 through November 30, 1975 for taxes due of \$32,000.00 plus penalty and interest. Petitioner executed a consent extending the time within which to issue an assessment of sales and use taxes for the above periods to March 19, 1976. The Audit Division had not completed an audit of petitioner's books and records prior to the expiration date on the consent and, therefore, issued the aforesaid Notice based on petitioner's purchase of the distribution rights to twelve motion picture films for \$300,000.00. The Notice showed \$2,000.00 in tax for each sales tax quarter under review except for the two periods ended in June and August 1974 wherein tax was assessed of \$333.00 and \$1,667.00, respectively.

4. On December 15, 1976, the Audit Division issued a second Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner upon completion of its audit. Said Notice asserted taxes due of \$72,188.28, plus penalty and interest of \$33,744.92, for a total of \$105,933.20 for the period September 1, 1973 through November 30, 1975 and was in addition to the Notice issued March 18, 1976.

5. Counsel for the Audit Division and petitioner stipulated that the tax due from both the aforementioned notices was revised to \$23,266.53. Petitioner agreed to and paid taxes of \$2,266.53. The sole remaining issue is the tax of \$21,000.00 on the purchase of the distribution rights to the twelve motion picture films.

6. On March 1, 1972 petitioner entered into an agreement with Sam Lake Enterprises, Inc., whereby petitioner agreed to purchase the distribution rights to twelve films for the sum of \$300,000.00. Said agreement contained the following provisions:

a. Purchaser agrees to pay to seller the sum of \$300,000.00 on or before January 31, 1975...

b. Purchaser agrees that all receipts from distribution of these films will be accounted for to seller on a monthly basis and that seventy-five percent of net receipts received by purchaser will be paid over on or before the tenth day of each month for the past calendar month in partial liquidation of the indebtedness...

c. Purchaser shall have full right to determine where and when its films shall be distributed and exhibited...

d. All film negatives shall remain within the City of New York.

7. The procedure involved in the creation of motion picture negatives consists of the acquisition of story rights, the assembling of talent, the creations of costumes and sets and the actual performance by actors and actresses for that purpose. After the original negative has been produced and edited, one or more fine grain master positives are created, and from such fine grain master positives, one or more duplicate negatives are created to facilitate the production of positive prints for distribution and exhibition. These duplicate negatives are called "dupes". A dupe is made by taking the original negative and producing from it, on other unexposed film, a fine grain master positive from which the additional dupe negatives are made. The fine grain master positive is made by the film laboratory but is not suitable for use by an exhibitor. Rather it is only suitable for use within the film laboratory in producing dupe negatives.

8. Petitioner acquired the original negatives and dupe negatives to the twelve motion pictures for the purpose of producing positive exhibition prints for distribution to theatres throughout the United States. The original negatives and dupe negatives were stored by Sam Lake Enterprises, Inc. in film laboratories in New York State. Sam Lake Enterprises, Inc. advised these

laboratories by letter that Mature Picture Corp. had total control over striking prints from the negatives.

The positive prints were rented by Mature Picture Corp. to exhibitors for a flat fee or for a percentage of their weekly gross receipts. Petitioner properly collected and remitted the sales tax on film rentals in New York State.

9. Petitioner made the following contentions:

a. That since the films were rented to exhibitors they were purchased for resale.

b. That although it made monthly payments on the films during the period at issue, the sales tax, if any, is due in the period ending May 31, 1972.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposed a tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article." The term "sale" is defined in section 1101(b)(5) as "Any transfer of title or possession or both,...rental, lease or license to use or consume...for a consideration or any agreement therefor."

B. That section 526.7(f) of the Sales and Use Tax Regulations provides, in part, as follows:

"(f) Reproduction rights. (1) The granting of a right to reproduce an original painting, illustration, photograph, sculpture, manuscript or other similar work is not a license to use or a sale, and is not taxable, where the payment made for such right is in the nature of a royalty to the grantor under the laws relating to artistic and literary property.

"(2) Mere temporary possession or custody for the purpose of making the reproduction is not deemed to be a transfer of possession which would convert the reproduction right into a license to use. See Howitt v. Street and Smith Publications, Inc., 276 N.Y. 345 and Matter of Frissell v. McGoldrick, 300 N.Y. 370.

"(3) Where some use other than reproduction is made of the original work such as retouching or exhibiting a photograph, the transaction is a license to use, which is taxable."

C. That in receiving the distribution rights to motion pictures, petitioner receives the right to reproduce movies within the meaning of section 526.7(f) of the Sales and Use Tax Regulations. The transfer of the original negatives and dupes to petitioner, solely for reproduction purposes, does not constitute a license to use within the meaning and intent of section 1101(b)(5) of the Tax Law and is, therefore, not subject to sales tax. See Opn. of Counsel of Dept. of Tax & Fin., October 29, 1981, 2 CCH N.Y. State Tax Rep., ¶66-130.

D. That Issue II is moot.

E. That the petition of Mature Picture Corp. is granted; that the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued March 18, 1976 and December 15, 1976 in accordance with Finding of Fact "5" and credit petitioner's partial payment of \$2,266.53 thereto.



DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983


PRESIDENT


COMMISSIONER

 
COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Mature Picture Corp	
Street and No.	
356 W. 44th St.	
P.O., State and ZIP Code	
New York, NY 10036	
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 481 208 243

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	
Donald L. Bunsis	
Street and No.	
2631 Merrick Rd	
P.O., State and ZIP Code	
Bellmore, NY 11716	
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