

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

September 28, 1983

Sam Lake Enterprises, Inc.  
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 :  
Sam Lake Enterprises, 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 3/1/70-2/28/76. :

AFFIDAVIT OF MAILING

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 Sam Lake Enterprises, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sam Lake Enterprises, Inc.  
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.

Susan Powell

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Sam Lake Enterprises, 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 3/1/70-2/28/76. :

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	:	
	:	
SAM LAKE ENTERPRISES, 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 March 1, 1970	:	
through February 28, 1976.	:	

---

Petitioner, Sam Lake Enterprises, Inc., 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 March 1, 1970 through February 28, 1976 (File No. 19802).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1980 at 9:15 A.M. Petitioner appeared by Donald L. Bunsis, C.P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the purchase of distribution rights to motion pictures is subject to tax.

FINDINGS OF FACT

1. Petitioner, Sam Lake Enterprises, Inc., was engaged in the distribution of motion picture films.
2. On April 28, 1977, 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 assessing sales and use tax of \$25,258.48, plus penalty

and interest of \$17,721.18, for a total amount due of \$42,979.66 for the period March 1, 1970 through February 28, 1976.

3. Petitioner executed consents extending the time within which to issue an assessment of sales and use taxes for the period March 1, 1970 through February 28, 1976 to June 19, 1977.

4. As the result of a pre-hearing conference, the sales and use tax assessed by the April 28, 1977 notice was revised to \$9,582.90. Petitioner agreed to and paid taxes of \$5,548.10. The sole remaining issue is the use tax of \$4,034.80 assessed on petitioner's purchase of the distribution rights to five motion picture films.

5. On November 8, 1971, petitioner purchased the distribution rights to five adult motion picture films for the sum of \$57,640.00. Petitioner brought the original motion picture negatives and duplicate negatives of the five motion pictures into New York State and stored them in film laboratories in this State.

6. 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.

7. Petitioner acquired the original negatives and dupe negatives to the five motion pictures for the purpose of producing positive exhibition prints for distribution to theatres throughout the United States. The positive prints were rented by petitioner to theatres for a flat fee or for a percentage of their weekly gross. Petitioner properly collected and remitted sales tax on film rentals in New York State.

#### 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 the petition of Sam Lake Enterprises, Inc. is granted; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 28, 1977 in accordance with Finding of Fact "4" and credit petitioner's payment of \$5,548.10 thereto.

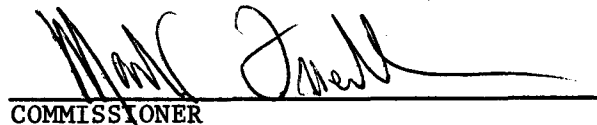
DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 470 316 020  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Sam Lake Enterprises, Inc.</i>	
Street and No. <i>356 W. 44th St.</i>	
P.O., State and ZIP Code <i>New York, NY 10036</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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982

P 470 316 021  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Donald L. Bunsis</i>	
Street and No. <i>2631 Merrick Rd.</i>	
P.O., State and ZIP Code <i>Bellmore, NY 11710</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	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982