

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

April 27, 1983

Twin Coast Newspapers, Inc.
c/o Eric Ridder, Vice President
110 Wall St.
New York, NY 10005

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 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
Claude E. Johnston
Hughes, Hubbard & Reed
One Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Twin Coast Newspapers, 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 3/1/75-5/31/78.		

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 April, 1983, he served the within notice of Decision by certified mail upon Twin Coast Newspapers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Twin Coast Newspapers, Inc.
c/o Eric Ridder, Vice President
110 Wall St.
New York, NY 10005

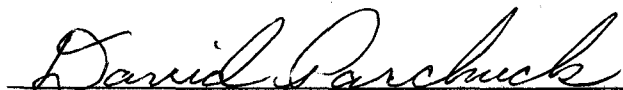
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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 April, 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 :
Twin Coast Newspapers, 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 3/1/75-5/31/78. :
:

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 April, 1983, he served the within notice of Decision by certified mail upon Claude E. Johnston the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Claude E. Johnston
Hughes, Hubbard & Reed
One Wall St.
New York, NY 10005

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 April, 1983.

David Parchuck

Ann R. Hegeland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
TWIN COAST NEWSPAPERS, 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 March 1, 1975
through May 31, 1978.

DECISION

Petitioner, Twin Coast Newspapers, Inc., c/o Eric Ridder, Vice President, 110 Wall Street, New York, New York 10005, 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, 1975 through May 31, 1978 (File No. 27267).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1982, at 1:30 P.M., with all briefs to be submitted by January 15, 1983. Petitioner appeared by Hughes, Hubbard & Reed (Claude E. Johnston, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Anna Colello, Esq., of counsel).

ISSUES

I. Whether the sales of certain publications by petitioner are exempt from sales and use tax as sales of newspapers or periodicals under section 1115(a)(5) of the Tax Law.

II. Whether two publications of petitioner, if not found to be newspapers or periodicals, are exempt from sales and use tax as sales of personal information services under section 1105(c)(1) of the Tax Law.

III. Whether imposition of the sales and use tax on petitioner's publications infringes on its constitutional rights of freedom of the press, due process of law, and equal protection.

FINDINGS OF FACT

1. On May 4, 1979 the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Twin Coast Newspapers, Inc., in the amount of \$36,734.72 plus interest of \$6,935.48 for a total due of \$43,670.20 for the period March 1, 1975 through May 31, 1978. On June 14, 1978 petitioner, by Thomas F. Butler, Assistant Treasurer, executed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the taxable period March 1, 1975 through February 28, 1978 to June 19, 1979.

2. The assessment was based on taxes due on sales of publications produced by petitioner which were deemed to be taxable by the Audit Division.

3. Petitioner, a wholly-owned subsidiary of Knight-Ridder Newspapers, Inc., owns the Journal of Commerce ("Journal"), a daily world trade publication. The Journal also publishes two weekly newspapers, the Import Bulletin and the Export Bulletin. The bulletins contain some articles concerning world trade news with the majority of each publication made up of cargo listings of imports or exports currently moving into or out of various United States and foreign ports. The Audit Division has held the Journal and the Bulletins to be nontaxable.

4. Petitioner also publishes two more specialized reports called the Import Special Information Service ("ISIS") and the Export Information Tabulation ("EXIT"). ISIS and EXIT present, in a computer printout format, information which has been extracted from the Import and Export Bulletins. Each ISIS and EXIT report is prepared for a specific customer. The customers describe

exactly what type of import or export they are interested in and what ports they are concerned with and petitioner then prepares a tailor made ISIS or EXIT report for each customer. Although each report may be different, all the information is extracted from the same sources, the Import and Export Bulletins. Information contained on one report may be duplicated on another report depending on each customer's request. Two or more customers may request the same information. The information is not in any way confidential. The ISIS and EXIT reports contain no news articles or expressions of editorial opinion but are simply computer-generated listings of import and export commodities, ports of destination, vessel and shipping line names, departure dates, and quantities. The computer printout sheets containing this information are then stapled together and distributed to subscribers. ISIS and EXIT reports are distributed weekly, monthly, or quarterly depending on the individual subscriber's needs. The Audit Division held receipts from ISIS and EXIT to be taxable.

5. Petitioner maintains that since the ISIS and EXIT reports contain current business and trade news which is of interest to the business community they should be considered newspapers or periodicals and exempt from sales and use tax. In the alternative, petitioner argues that if ISIS and EXIT are not exempt as newspapers they are exempt as personal or individual information services since each report is custom-made for the individual subscriber.

6. Petitioner also publishes, under the auspices of the Journal, the Transportation Telephone Tickler ("TTT") and the Directory of United States Importers and the Directory of United States Exporters ("Directories"). The TTT is a directory containing names, addresses, telephone numbers and extensions, and job titles for shipping lines, shipping agents, and various other persons and companies involved in world trade. The TTT also contains advertisements by

some of the companies listed therein. The TTT is published annually in a paperback book format in a four volume national edition and in various regional editions. The TTT is available by subscription, by individual purchase from petitioner, or by free distribution to investors. There are no articles by different authors or by a staff in the TTT, nor are there any writings of an editorial nature. It simply contains directory listings of names, addresses and telephone numbers. Receipts from the TTT were deemed taxable by the Audit Division.

7. The Directories contain lists of all the persons and companies that are involved in the importation and exportation of goods overseas. Like the TTT, the Directories supply names, addresses, telephone numbers and job titles. The Directories are divided into different categories of listings such as commodity or company name so that the various listings may be cross-referenced. The Directories also contain a small number of advertisements. The Directories are published every other year in a large, hardbound book format and are available to the general public for purchase directly from the petitioner. There are no articles or editorial opinions contained in the Directories. Receipts from the Directories were also deemed taxable by the Audit Division.

8. Petitioner argued that the receipts from TTT and the Directories should be exempt from sales and use tax as periodicals since they are published at regular intervals, have continuity of design and format, are available to the general public, and provide current information of interest to the business and trading communities.

9. Petitioner also argued that the imposition of sales and use tax on the retail sales of its publications would infringe on its constitutional rights of freedom of the press, due process, and equal protection.

CONCLUSIONS OF LAW

A. That section 1115(a)(5) of the Tax Law provides that receipts from the sale of newspapers and periodicals shall be exempt from sales and use taxes.

B. That a publication which does not regularly supply information on a variety of subjects, would not qualify as a proper medium for the publication of legal notices, and never presents "internally generated thoughts or expressions of editorial opinion...but functions as a passive organ for the transmission of whatever" information those who pay for such a service wish to have supplied to them is not a newspaper or periodical within the normally accepted meaning of those terms (See G & B Publishing Co., Inc. v. Department of Taxation and Finance, 57 A.D.2d 18, mot. for lv. to app. den., 42 N.Y. 2d 807). A publication must contain "a variety of articles by different authors devoted to literature, the sciences or the arts, some special industry, profession, sport or other fields of industry". A publication having a rigid standardized format with contents composed almost entirely of listings and statistical data does not qualify as a periodical (Standard Rate & Data Service, Inc. v. State Tax Commission, 72 A.D.2d 659, mot. for lv. to app. den., 48 N.Y. 2d 612).

C. That inasmuch as the TTT and the Directories contain no literary or editorial content of any type but are merely rigid, standardized listings of directory style information they cannot be considered a periodical for sales and use tax purposes. The ISIS and EXIT reports likewise contain no literary or editorial content whatsoever and are merely computer generated listings of information extracted from petitioner's other publications. Moreover the ISIS and EXIT reports do not have a consistency of content among weekly, monthly and quarterly reports. Each report is produced on an ad hoc basis as individual customers request the service. All reports could be the same or all reports

could be different in a particular period. ISIS and EXIT are, therefore, more in the nature of information services and do not qualify as newspapers or periodicals for sales and use tax purposes.

D. That section 1105(c)(1) of the Tax Law imposes a tax on receipts from the sales of 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, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons...".

E. That inasmuch as ISIS and EXIT are information services which merely extract and compile information which is generally available to the public in other forms, and is or may be substantially incorporated in reports furnished to other customers, they are not personal information services and receipts from the sale of such services are subject to tax under section 1105(c)(1) of the Tax Law.

F. That the laws of New York State are presumed to be constitutionally valid at the administrative level of the State Tax Commission.

G. That the petition of Twin Coast Newspapers, Inc. is denied and the Notice of Determination and Demand For Payment of Sales and Use Taxes Due issued May 4, 1979 is sustained.

DATED: Albany, New York

APR 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 389 758 842
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Twin Coast Newspapers, Inc.</u>	
c/o <u>Eric R. Padden, Vice President</u>	
Street and No. <u>110 Wall St.</u>	
P.O., State and ZIP Code <u>New York, NY 10005</u>	
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 389 758 843
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Claude E. Johnston</u>	
<u>Hughes, Hubbard + Reed</u>	
Street and No. <u>One Wall St.</u>	
P.O., State and ZIP Code <u>New York, NY 10005</u>	
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