

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Empire Typographers, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 12/1/74-8/31/77. :
_____ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 2nd day of May, 1984, he served the within notice of Decision by certified mail upon Empire Typographers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Empire Typographers, Inc.
28 W. 23rd Street
New York, NY 10010

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
2nd day of May, 1984.

David Parchuck

James A. Hapgood

Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

State of New York }
County of Albany } ss.:

George L. Robbins
87 Newkirk Rd.
Yonkers, NY 10710

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.

David Paruch

Bonnie A. Chapman
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 2, 1984

Empire Typographers, Inc.
28 W. 23rd Street
New York, NY 10010

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
George L. Robbins
87 Newkirk Rd.
Yonkers, NY 10710
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EMPIRE TYPOGRAPHERS, 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 December 1, 1974	:	
through August 31, 1977.	:	

Petitioner, Empire Typographers, Inc., 28 West 23rd Street, New York, New York 10010, 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, 1974 through August 31, 1977 (File No. 22544).

A small claims hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 20, 1983 at 1:15 P.M., with all briefs to be submitted by September 20, 1983. Petitioner appeared by George L. Robbins, P.A. The Audit Division appeared by John P. Dugan, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether film which is used in the manufacture of typography may be purchased for resale pursuant to section 1101(b)(4)(i) of the Tax Law.

FINDINGS OF FACT

1. On January 10, 1978, the Audit Division, as the result of a field audit, issued to petitioner, Empire Typographers, Inc., a Notice and Demand for Payment of Sales and Use Taxes Due under Articles 28 and 29 of the Tax Law for the period December 1, 1974 through August 31, 1977 in the amount of \$466.63, plus penalty and interest of \$99.52, for a total of \$566.15.

2. Also on January 10, 1978, the Audit Division, as the result of a field audit, issued to the petitioner a Notice of Determination and Demand for Payment of Sales and Use Taxes Due under Articles 28 and 29 of the Tax Law for the period December 1, 1974 through August 31, 1977 in the amount of \$4,833.80, plus penalty and interest of \$1,903.14, for a total due of \$6,736.94.

3. Petitioner, Empire Typographers, Inc., by signature of its president, Harry Blumenthal, executed a consent extending the period of limitation for assessing sales and use taxes for the period at issue to September 20, 1978.

4. The aforementioned Notice and Demand represents additional taxes found to be due on expense purchases and fixed asset purchases. Said amount has been agreed to by petitioner and is not at issue in this proceeding. The aforementioned Notice of Determination represents additional taxes found due on petitioner's purchases of film. The petitioner timely filed a petition to review said determination.

5. Petitioner, Empire Typographers, Inc., is engaged in the manufacture of typography which is used in the fabrication of printing plates. Petitioner's customers were mostly advertising agencies; however, petitioner also created typography for magazine and newspaper publishers, printers and other companies in the graphic arts industry. The typography is transferred to the customer either as a negative image on film (typographic film) or as a positive image on photographic paper (positive photograph).

6. In the manufacture of typography, the petitioner takes film and, through a photographic and chemical process, develops thereon an image pursuant to the customer's requirements. The image may be words (type) or pictures which the customer wishes to convey. In the graphic arts industry, typography

is considered an art form in view of the hundreds of different styles of faces or type which the typographers are required to produce.

After the typographic film has been developed, the petitioner creates a proof which is the first view of the image on white photographic paper. Proofs are used for author's alterations which are changes or corrections the customer desires to make.

After the modifications have been made and the customer has given final approval to the typography, the petitioner's work is completed. The petitioner forwards either the typographic film or the positive photograph (which is created from the typographic film) on to the printer for fabrication of the printing plates.

7. In those cases where the positive photograph is sent to the printer, the petitioner retains the typographic film as custodian for its customer. All title and rights to the film are vested in the customer from the moment the first image is generated thereon. The petitioner can in no way utilize the film for its own purpose. The petitioner cannot use it to proclaim the quality of its work to attract new customers, cannot change it and cannot destroy it. If the petitioner was to cease operations, the typographic film in its possession would be returned to its customers.

8. Petitioner's invoice to its customers included charges for typography, author's alterations and proofs.

9. On audit, the Audit Division determined that the petitioner purchased film in the amount of \$120,845.00. The Division considered the film to be equipment and subject to the 4 percent New York City sales and use tax, but exempt from the New York State sales and use tax. The tax due thereon amounted

to \$4,833.80. The audit method and computation of additional taxes were not contested by the petitioner.

10. The petitioner contended that the film was purchased for resale to its customers. The petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1101(b) of the Tax Law defines retail sales, in part, as follows:

"(4) Retail sales. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property..." (emphasis added).

B. That the film which was merely developed and transferred to petitioner's customers as typographic film was purchased "for resale as such" within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law and is therefore not subject to the sales and use tax.

C. That the film, which was developed and used by petitioner in the creation of a positive photograph prior to any transfer of title or possession of said photograph, was not purchased "for resale as such" within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law. Since the film was used by petitioner in its production process, it is subject to the sales and use tax (see Matter of Saphar & Associates, Inc., State Tax Commission, February 11, 1983).

D. That the penalty is cancelled and interest is reduced to the minimum statutory rate.


E. That the petition of Empire Typographers, Inc. is granted to the extent indicated in Conclusions of Law "B" and "D" above; that the Audit Division is hereby directed to modify the Notice of Determination and Demand

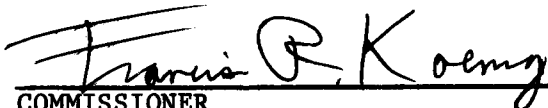
for Payment of Sales and Use Taxes Due issued January 10, 1978; and that except as so granted, the petition is in all other respects denied.

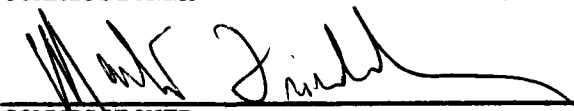
DATED: Albany, New York

STATE TAX COMMISSION

MAY 02 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 470 315 485
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>George J. Hattens</i>	
Street and No. <i>87 Newark Rd</i>	
P.O., State and ZIP Code <i>Yonkers NY 10710</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 470 315 513
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Chapin's Propagators, Inc.</i>	
Street and No. <i>28 W. 23rd St.</i>	
P.O., State and ZIP Code <i>New York, NY 10011</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