

STATE TAX COMMISSION

Conrad A. Heyer
Authorized to administer oaths
pursuant to Tax Law section 174

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

September 21, 1984

Hudson Printing Co., Inc.
200 Hudson Street
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, 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
Morris Turetzky
Turetzky, Sternheim Co.
114 Liberty St., Suite 204
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HUDSON PRINTING CO., 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, 1976	:	
through May 31, 1980.	:	

Petitioner, Hudson Printing Co., Inc., 200 Hudson Street, New York, New York 10013, 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, 1976 through May 31, 1980 (File No. 33476).

A formal hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 19, 1983, at 2:45 P.M., with all briefs to be submitted by November 23, 1983. Petitioner appeared by Turetzky, Sternheim Co. (Morris Turetzky, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined the sales and use taxes due by petitioner, Hudson Printing Co., Inc., for the period March 1, 1976 through May 31, 1980.

II. Whether the petitioner is bound by a consent executed by its purported representative agreeing with the audit test periods.

FINDINGS OF FACT

1. On March 20, 1981, the Audit Division issued two timely notices of determination and demand for payment of sales and use taxes due against petitioner,

Hudson Printing Co., Inc., assessing a tax due of \$36,876.63 plus interest for the period March 1, 1976 through May 31, 1980.

2. The aforementioned notices were issued as a result of a field audit and reflected the sales and use taxes which the Audit Division determined due in the following categories: unremitted sales tax; recovered bad debts; sundry sales; expense purchases and fixed asset acquisitions. It is the tax determined due on expense purchases which petitioner protested.

3. The expense purchases of petitioner consisted of the purchases of plates (negatives, flats and artwork), the purchases of mechanicals, printing expenses, roller expenses, sundry factory expenses and auto expenses. On audit, a review was conducted of selected purchases within each sub-category of the expense purchases over a test period, an error rate was computed and the error rate projected for the entire audit period.

4. At a pre-assessment conference, Mr. Isaac Sternheim of Turetzky, Sternheim Co. signed a statement that he was a "person duly empowered by (petitioner) to represent them (sic) in all sales tax matters..." and agreeing with and accepting "the audit test periods used and projected to determine the sales tax deficiency for the period 3/1/76 thru 5/31/80, but not the dollar amount determined... The block sampling of selected purchases are (sic) considered representative of the subject vendor, Hudson Printing Co., Inc., for the period under audit." A Power of Attorney appointing Turetzky, Sternheim Co. as its representative had been duly executed by the petitioner.

5. Petitioner argued that the audit of expense purchases was erroneous since the plates (including negatives, flats and artwork) and mechanicals used in printing projects for exempt organizations were purchased by it as agent for the exempt organizations. It was the Audit Division's position that the plates

and mechanicals were purchased by petitioner and used by petitioner in its printing business before being resold. Because the plates and mechanicals were equipment used in the production of printed matter for sale, the Audit Division computed only the New York City local sales and use tax on said purchases.

6. The printing which petitioner did for exempt organizations represented 50 percent of its printing business and was obtained on a bid basis. The bids that petitioner prepared and submitted to the exempt organizations either itemized the cost to print a specified quantity, stated a total cost to print a specified quantity, or stated a price for printing on a per thousand basis. The bids, in each instance, provided that the plates (negatives, flats, artwork) and mechanicals were to become the property of the exempt organization. When a printing job for an exempt organization was completed, petitioner prepared a billing for a lump sum amount for the entire job. The plates and mechanicals became the exempt organization's property after the printing work had been performed and upon payment to petitioner for the printing.

7. Petitioner's representative raised, in his brief, the argument that the statement signed by Mr. Sternheim (Finding of Fact "4") was invalid. It is alleged that Mr. Sternheim was not a Certificated Public Accountant, an attorney, a public accountant or a person admitted to practice before the Internal Revenue Service. No proof was offered to show Mr. Sternheim's credentials. However, petitioner's representative stated, at the hearing, that Mr. Sternheim was a partner in Turetzky, Sternheim Co. and "there is no question about his authorization (to sign the consent)."

CONCLUSIONS OF LAW

A. That an agency relationship did not exist between petitioner, Hudson Printing Co., Inc., and its exempt organization customers. The plates (negatives,

flats, artwork) and mechanicals were used by petitioner in its printing business with the exempt organizations prior to any transfer of title or possession to said customers. The purchases thereof by petitioner were, accordingly, retail purchases pursuant to section 1101(b)(1) of the Tax Law and properly subject to the New York City local sales and use tax.

B. That the petitioner, Hudson Printing Co., Inc. is bound by the consent executed by Mr. Sternheim. Mr. Sternheim participated in the pre-assessment conference as a person "duly empowered" to represent the petitioner. Furthermore, petitioner's representative at the hearing indicated that there is no question about Mr. Steinheim's authorization to sign the consent.

C. That there was an agreement in principle with the audit procedures. The procedures used were generally accepted audit procedures and that, based thereon, the resultant tax due arrived at was properly determined in accordance with section 1138(a) of the Tax Law.

D. That the petition of Hudson Printing Co., Inc. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 21 1984

Rodrick Cowden
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER

P 470 315 358

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Maria Turitzky</i>	
Street and No. <i>Turitzky Sternheim</i>	
P.O., State and ZIP Code <i>114 8th St Suite 204</i>	
Postage <i>New York NY 10006</i>	
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 470 315 357

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Sheldon Printing Co. Inc.</i>	
Street and No. <i>200 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