

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of World Journal	:	
	:	AFFIDAVIT OF MAILING
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 8/1/79-12/1/79.	:	

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 21st day of March, 1984, he served the within notice of Decision by certified mail upon World Journal, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

World Journal
c/o David Isaacson
166 Madison Ave.
New York, NY 10016

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
21st day of March, 1984.

David Parchuck

James J. Maglione
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 21, 1984

World Journal
c/o David Isaacson
166 Madison Ave.
New York, NY 10016

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
David Isaacson
166 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
WORLD JOURNAL	:	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 August 1, 1979	:	
through December 31, 1979.	:	

Petitioner, World Journal, c/o David Isaacson, 166 Madison Avenue, New York, New York 10016, 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 August 1, 1979 through December 31, 1979 (File No. 31280).

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 June 21, 1983 at 1:30 P.M., with all briefs to be submitted by September 15, 1983. Petitioner appeared by David Isaacson, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund of all sales tax paid on telephone service used in the collection and dissemination of news under the exemption allowed by section 1115(b)(i) of the Tax Law for toll charges, mileage service and associated station terminal equipment.

FINDINGS OF FACT

1. On April 22, 1980, petitioner, World Journal, filed an Application for Credit or Refund of State and Local Sales or Use Tax in the amount of \$68.84 for the period August 1, 1979 through December 22, 1979. The amount claimed

represented 80 percent of the sales tax paid on petitioner's telephone service for the period in issue. The figure of 80 percent represents that portion of the telephone service used by petitioner in the collection or dissemination of news.

2. The Audit Division, by letter dated May 19, 1980, advised petitioner that it was denying petitioner's claim, in part, in the amount of \$67.44. The balance of the claim, \$1.40, was refunded to petitioner. The basis of the Audit Division's partial denial was that section 1115(b)(1) of the Tax Law exempts "only toll charges and associated station terminal equipment" and, as a result, petitioner's request for refund of tax paid on its monthly service charge, local usage and other charges were denied in full.

3. Petitioner publishes the World Journal, a Chinese language newspaper having one of the largest circulations of a newspaper of its type in New York City. The Audit Division has allowed 80 percent of petitioner's telephone usage as being devoted to collection or dissemination of news. Petitioner's monthly telephone bills for the period in issue each contained a statement of charges for Monthly Charge for Service, Local Usage, and Directory Assistance and Toll Calls. Sales tax was charged on each of these items and paid by petitioner. The Audit Division refunded the tax paid on the item listed as Directory Assistance and Toll Calls.

4. Petitioner maintains that, under section 1115(b)(1) of the Tax Law, which allows an exemption for telephone service when used by newspapers in the collection and dissemination of news if the charges are for toll charges, mileage services, and charges for associated station terminal equipment, it should have been granted a refund of 80 percent of the sales tax paid on all of the items listed on its monthly bill. Petitioner argued that local usage

should be included in the category of toll charges pursuant to a Public Service Commission tariff which defined Message Toll Telephone Service as follows:

"Message toll telephone service is that of furnishing facilities for telephone communication between telephones in different local calling areas in accordance with the regulations and schedules of charges specified in this tariff. The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephone, except as otherwise provided in this tariff."

5. The Service and Rate Guide published by New York Telephone defines message toll telephone service as "telephone communications between telephones in different local calling areas. The calls are known as message tolls or toll calls and are subject to individual charges."

6. Petitioner further argues that the telephone bill item designated as Monthly Charge for Service should be included in the section 1115(b)(i) category of "associated station terminal equipment". Petitioner submitted a statement from New York Telephone enumerating service charge details that make up the monthly service charge. The statement included service charges for five telephones and additional charges for touch tone service, six button telephone service, and wire. Petitioner maintains that the charges for the equipment listed on the telephone company's service charge detail statement are charges for associated station terminal equipment within the meaning and intent of section 1115(b)(i) of the Tax Law. Neither the Public Service Commission, New York Telephone, nor the Department of Taxation and Finance has ever defined "associated station terminal equipment" per se. Public Service Commission tariffs have included such items as colored telephones, speakerphones, princess telephones, cords and other such equipment in the category of "Supplemental Station Equipment".

7. Petitioner also argues that the item designated "wire" on the service charge detail statement of the telephone company is the "mileage service" mentioned in section 1115(b)(1). Petitioner submitted letters from New York Telephone which equated "wire" with the term "loop" in determining service charges. "Loop" is the term used to express investments in the plant facility, including the circuit cable and the supporting structure that extends from the telephone company's central office to the customer's premises. Nowhere in the New York Telephone correspondence is the term "wire" used synonymously with "mileage service".

CONCLUSIONS OF LAW

A. That section 1115(b)(1) of the Tax Law provides that telephony and telegraphy and telephone and telegraph service used by newspapers, radio broadcasters and television broadcasters in the collection or dissemination of news shall be exempt from the sales tax "if the charge for such services is a toll charge or a charge for mileage services, including the associated station terminal equipment".

B. That the Public Service Commission tariff discussed in Finding of Fact "4" clearly defines message toll telephone service as communications between "different local calling areas". Therefore, calls within the same local calling area cannot be considered "toll calls" within the meaning and intent of section 1115(b)(1). The portion of petitioner's bill labeled "local usage" does not fall within the section 1115(b)(1) exemption and the Audit Division properly denied petitioner's claim for refund of tax paid on local usage charges.

C. That petitioner presented no evidence which would show that any part of the amounts paid for its telephone service were includible in the category

of mileage services and thus exempt from sales tax. Petitioner's argument that charges for wire are charges for mileage services is not supported by the record.

D. That the term "associated station terminal equipment" includes those items of telephone equipment located at the user's premises and which are utilized in the collection and dissemination of news. As demonstrated by the Service Charge Details statement from New York Telephone, the monthly charge for service consists of charges for telephones, touch tone equipment, six button telephone equipment, and wire. All of these items are station terminal equipment, the charge for which is subject to tax under §1105(b) of the Tax Law and exempt under §1115(b)(1) if used in the collection and dissemination of news.

Based upon information submitted by petitioner, 65.5 percent of the charge for "associated station terminal equipment" is allocable to toll charges. Therefore, 80 percent of the 65.5 percent, or 53.2 percent of the charge, is exempt from tax. For that reason, \$19.86 should be refunded.

E. That the petition of World Journal is granted to the extent indicated in Conclusion of Law "D"; that the Audit Division is directed to refund the sum of \$19.86, together with such interest as may be lawfully owing; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 21 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>David Isaacson</i>	
Street and No. <i>166 Madison Ave</i>	
P.O., State and ZIP Code <i>NY, NY 10016</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 440 976 801

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