

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Heidelberg Eastern, 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 12/1/77 - 8/31/80. :
:

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 16th day of July, 1985, he served the within notice of Decision by certified mail upon Heidelberg Eastern, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Heidelberg Eastern, Inc.
73-45 Woodhaven Blvd.
Glendale, NY 11385

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
16th day of July, 1985.

David Parchuck

James A. Laguarda
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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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 16th day of July, 1985, he served the within notice of Decision by certified mail upon Larry Abowitz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Larry Abowitz
Ernst & Whinney
153 East 53rd St.
New York, NY 10022

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 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
16th day of July, 1985.

David Parchuck

Annie A. Hapgood

Authorized to administer oaths
pursuant to Tax Law section 174

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

July 16, 1985

Heidelberg Eastern, Inc.
73-45 Woodhaven Blvd.
Glendale, NY 11385

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
Larry Abowitz
Ernst & Whinney
153 East 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE TAX COMMISSION

DECISION

1. On March 2, 1982, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Heidelberg Eastern, Inc., in the amount of \$37,483.76 plus interest of \$10,988.45 for a total due of \$48,472.21 for the period December 1, 1977 through August 31, 1980.

2. At a prehearing conference, adjustments were made to the original assessment leaving \$7,502.46 in use tax at issue.

3. Petitioner is engaged in the business of selling computerized printing and graphics equipment. Sometime after December 1, 1977, petitioner took a computerized printing press from its stock and loaned it to the Rochester Institute of Technology ("RIT"). RIT used the equipment for the education of students in the use of computerized printing equipment. In addition to expressing its charitable intent, petitioner's purposes in loaning the equipment were to create future favorable impressions of its equipment among the students, to make its trade name more familiar and to use it as a form of advertising. Petitioner retained title to the equipment and it was carried on petitioner's books as "equipment for loan". Petitioner depreciated the equipment on its books. The total value of the equipment loaned was \$104,758.00.

4. On audit, the Audit Division determined that the equipment loaned to RIT was subject to use tax as tangible personal property withdrawn from stock and used for promotional purposes. Petitioner maintains that because the equipment was used by RIT, an exempt organization, there is no use tax due from petitioner.

CONCLUSIONS OF LAW

A. That section 1110 of the Tax Law provides, in pertinent part, that:

"Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one, except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him in the regular course of business..."

B. That 20 NYCRR 526.9(a) provides:

"The word 'use' means and includes the exercise of any right or power over tangible personal property by the purchaser thereof and includes, but is not limited to the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real property, or any consumption of such property."

Withdrawal from storage means to remove from storage any tangible personal property which was so stored for any purpose whatsoever (20 NYCRR 526.9[b][3]).

C. That a purchase for resale is excluded from the definition of retail sale and is not subject to sales and use tax (Tax Law § 1101[b][4]). However, tangible personal property which is purchased and given away without charge, for promotion or advertising purposes is not purchased for resale. It is a retail sale to the purchaser thereof and is not a sale to the recipient of the property (20 NYCRR 526.6 [c][4]; see Waxlife, U.S.A. Inc. v State Tax Commission, 67 A.D. 2d 1040).

D. That, although petitioner may have originally purchased the equipment for resale, when it withdrew the equipment from stock to loan it to RIT the equipment was no longer exclusively for resale and became subject to use tax. The fact that RIT is an exempt organization is irrelevant. The withdrawal of tangible personal property from stock for use as a gift, whether for charitable reasons, promotions, advertising, goodwill or any other reason, subjects such property to use tax.


E. That the petition of Heidelberg Eastern, Inc. is granted to the extent indicated in Finding of Fact "2"; that the Audit Division is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due

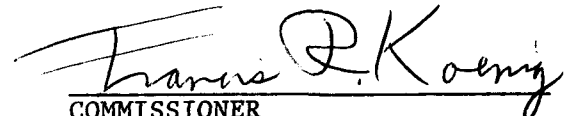
issued March 2, 1982 accordingly; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

JUL 16 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 095 690 893

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1984-448-014

Sent to	<i>Garry Chavira</i>	
Street and No.	<i>Dr. & Whitney</i>	
P.O., State and ZIP Code	<i>153 E. 53rd St</i>	
Postage		\$ <i>1.00</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		

P 095 690 892

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1984-448-014

Sent to	<i>Heidelberg Eastern Inc</i>	
Street and No.	<i>76-45 Woodhoun Blvd.</i>	
P.O., State and ZIP Code	<i>Stamford NY 11385</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		