

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Metropolitan Life Insurance Company :
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Period 12/1/77-11/30/80. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Mutual Life Insurance Company of New York :
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Period 6/1/75-5/31/78. :

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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Mutual Life Insurance Company of New York, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mutual Life Insurance Company of New York
c/o Irving P. Sulzer 1740
Mail Drop 17-23
New York, NY 10019

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
15th day of April, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Metropolitan Life Insurance Company :
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
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AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Mutual Life Insurance Company of New York :
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Period 6/1/75-5/31/78. :

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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Arnold B. Panzer, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arnold B. Panzer
Roberts & Holland
30 Rockfeller Plaza
New York, NY 10112

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
15th day of April, 1985.

David Parchuck

James C. Fitzgerald

Authorized to administer oaths
pursuant to Tax Law section 174

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

April 15, 1985

Mutual Life Insurance Company of New York
c/o Irving P. Sulzer 1740
Mail Drop 17-23
New York, NY 10019

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
Arnold B. Panzer
Roberts & Holland
30 Rockefeller Plaza
New York, NY 10112
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Metropolitan Life Insurance Company :
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Period 12/1/77-11/30/80. :

AFFIDAVIT OF MAILING

In the Matter of the Petition :
of :
Mutual Life Insurance Company of New York :
for Revision of a Determination or for Refund of :
Sales & Use Taxes under Articles 28 & 29 of the :
Tax Law for the Period 6/1/75-5/31/78. :

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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Metropolitan Life Insurance Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Metropolitan Life Insurance Company
One Madison Avenue
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
15th day of April, 1985.

David Parchuck

James P. Gallagher
Authorized to administer oaths
pursuant to Tax Law section 174

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

April 15, 1985

Metropolitan Life Insurance Company
One Madison Avenue
New York, NY 10010

Gentlemen:

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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
Arnold B. Panzer
Roberts and Holland
30 Rockefeller Plaza
New York, NY 10112
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
METROPOLITAN LIFE INSURANCE COMPANY
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, 1977
through November 30, 1980.

DECISION

In the Matter of the Petition
of
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK
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 June 1, 1975
through May 31, 1978.

Petitioners, Metropolitan Life Insurance Company, One Madison Avenue, New York, New York 10010 and Mutual Life Insurance Company of New York, c/o Irving P. Sulzer, 1740 Broadway, Mail Drop 17-23, New York, New York 10019, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods December 1, 1977 through November 30, 1980 and June 1, 1975 through May 31, 1978, respectively (File Nos. 39506 and 30356).

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 17, 1984 at 9:30 A.M., with all briefs submitted by December 18, 1984. Petitioners appeared by Arnold B. Panzer, Esq. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether reports concerning applicants for life and health insurance purchased by petitioners from Hooper Holmes, Inc. and Equifax, Inc. constituted the purchase of "detective services" within the meaning and intent of New York City Administrative Code §BB46-2.0(a)(2).

FINDINGS OF FACT

1. On August 12, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Metropolitan Life Insurance Company ("Metropolitan") in the amount of \$185,978.24, plus interest of \$29,481.61, for a total due of \$215,459.85 for the period December 1, 1977 through November 30, 1980. The assessment was based on Metropolitan's purchase of reports from Hooper Holmes, Inc. ("Hooper Holmes") and Equifax, Inc. ("Equifax"), and was based on the theory that the purchase of these reports constituted the purchase of information services taxable under Tax Law §1105(c)(1). Following the decision of the Court of Appeals in Matter of Metropolitan Life Insurance Company v. State Tax Commission, 55 N.Y.2d 758 (1981), the Audit Division revised and recomputed the assessment on the ground that the purchase of the reports constituted the purchase of detective services taxable under New York City Administrative Code §BB46-2.0(a)(2), enacted pursuant to Tax Law §1212-A(h)(2)(i)(B) of Article 28. This recomputation reduced the amount of the claimed deficiency to \$92,989.12.

2. On March 27, 1980, the Audit Division issued a Notice of Determination and Demand against petitioner Mutual Life Insurance Company of New York ("MONY") in the amount of \$77,630.00, plus interest of \$19,493.52, for a total due of \$97,123.52 for the period June 1, 1975 through May 31, 1978. The assessment was based upon MONY's purchase of reports from Hooper Holmes and Equifax. The

notice also included tax assessed with respect to MONY's purchase from Hooper Holmes of a service known as "Portamedic". Portamedic is a service performed by paramedical personnel, who visit applicants for life insurance in their homes or offices and perform a superficial medical examination. Following the decision of the Court of Appeals in Matter of Metropolitan Life Insurance Company, supra, the Audit Division revised and recomputed the deficiency on the grounds that the purchase of the foregoing services constituted the purchase of a detective service taxable under New York City Administrative Code §BB46-2.0(a)(2). This recomputation reduced the assessment to \$36,641.50. By stipulation between petitioners and the Audit Bureau, it was agreed that \$968.60 of the revised deficiency, representing taxes assessed with respect to the purchase of Portamedic, was erroneously assessed. The only issue thus remaining, as to both petitioners, is the treatment of the Hooper Holmes and Equifax reports as "detective services" under the New York City Administrative Code.

3. Hooper Holmes is a New York corporation with its principal offices in Basking Ridge, New Jersey. The company provides services under three major service groupings. The first grouping is referred to as "portamedic nursing." These services consist of providing nurses and home-health aides for staff relief in hospitals, nursing homes, and other institutions, as well as providing nurses and home-health aides for private homes for home-health care. Portamedic nursing also includes "portamedic surveys." These consist of physical examinations performed by nurses on life and health insurance applicants. Portamedic nursing constitutes approximately 50 percent of Hooper Holmes' revenues.

The second major service group is referred to as "direct mail marketing services." This is a computer service, performed exclusively in New Jersey, for direct-mail marketers. Through the use of a Hooper Holmes computer,

duplicate names, addresses and other relevant information are removed from the customer's mailing lists, so as to save the customer the cost of sending duplicates through the mail.

The third major service grouping is referred to as "business information services." Activities performed by the Hooper Holmes business information group include obtaining motor vehicle reports from state motor vehicle bureaus on behalf of motor vehicle insurers, preparing foreclosure reports, and providing property preservation work on vacant properties for mortgage banking companies. The reports at issue in this matter constitute part of Hooper Holmes business information services group.

4. The purpose of the reports prepared with respect to applicants for life insurance policies is to assist the prospective insurer in evaluating the risks associated with issuing a particular policy. The reports prepared by Hooper Holmes contain information with respect to the applicant's employment, financial standing, financial worth, recreational activities, health, and habits. The principal source of the information contained in a Hooper Holmes report is the applicant himself, who is interviewed in virtually every case. In addition to the applicant, Hooper Holmes will interview one or more additional persons. The most typical Hooper Holmes report consists of an interview with the applicant plus two additional persons, usually the applicant's employer and a neighbor. A report of this type costs about \$12.00 to \$15.00, and takes about half an hour of research to prepare, including typing. All Hooper Holmes reports are typed on a pre-printed form. The applicant is always notified in advance that he will be the subject of a Hooper Holmes inquiry. Such notification is required by the Federal Fair Credit Reporting Act to which all Hooper Holmes insurance reporting activities are subject.

5. Hooper Holmes' employees engaged in preparing reports on insurance applicants are known as "field inspectors." In hiring field inspectors, Hooper Holmes does not look for people with a background in police or detective work. In fact people with such backgrounds are generally regarded as being ill-suited for Hooper Holmes' type of work. Hooper Holmes does not hold itself out as doing private detective or investigative work and has never done so.

Although Hooper Holmes is licensed as an "investigator" under Article 7 of the General Business Law, Hooper Holmes' "investigative" work is strictly limited to reporting on applicants for insurance. Hooper Holmes does not offer personal or business protection; it does not do divorce work or follow suspects; it does not track down missing persons or stolen funds; it does not investigate actual or suspected thefts; it does not locate missing property; it does not handle blackmail cases; it does not do polygraphs or electronic sweeps; nor will Hooper Holmes undertake any such work. Hooper Holmes' field inspectors never carry guns. Hooper Holmes is not a member of the Associated Licensed Detectives of New York and its corporate charter for the State of New York does not authorize it to perform detective services.

6. Equifax is a Georgia corporation with its principal offices located in Atlanta. In addition to reporting on applicants for life insurance, Equifax is engaged in a variety of business activities both within and without the life and health field. Equifax offers a paramedical service called PMI, which is basically similar to the mobile examination service offered by Hooper Holmes' Portamedic service. Outside the life and health insurance field, Equifax prepares reports for casualty insurers on the replacement cost of residential homes, performs physical auditing of merchants' inventories on behalf of banks

and other commercial lenders, performs damage inspections on used motor vehicles and prepares various market surveys.

7. The reports prepared by Equifax on applicants for life insurance include information relating to the applicant's occupation, duties at work, employment background, financial standing, recreational pursuits, and habits, primarily the use of cigarettes and alcohol. As is the case with Hooper Holmes, the bulk of the information contained in Equifax reports is developed through interviews with the applicant himself. A significant percentage of Equifax reports are based solely on an interview with the applicant. The typical Equifax report is based on interviews with two persons in addition to the applicant. This report, known as the "basic life report", takes about half an hour to prepare, including interviews and typing, and costs about \$7.00. All reports are typed on a pre-printed form.

8. Equifax employees engaged in preparing reports on insurance applicants are known as "field representatives." In hiring field representatives, Equifax, like Hooper Holmes, tends to avoid hiring people who have worked in detective agencies or have a background in police work. None of the field representatives in Equifax's New York office has such a background. Equifax, like Hooper Holmes, is licensed as an "investigator" under Article 7 of the General Business Law and its investigative work is strictly limited to reporting on applicants for insurance. Equifax has never held itself out as being in the private detective business. All employees are instructed not even to intimate to anybody that they are "private detectives." Equifax is not listed in the New York City Yellow Pages under "detective agencies." Equifax is not a member of the Associated Licensed Detectives of New York and its license to do business in the State of New York does not authorize it to engage in detective services.

9. Equifax's predecessor, Retail Credit Company, Inc., became licensed under Article 7 of the General Business Law in 1942. Prior to 1938, the General Business Law covered only the licensing of "detectives." In 1938, the law was amended to cover both "private detectives and investigators." Retail Credit was specifically licensed as being in the business of "investigator." Retail Credit's license was issued with the word "detective" struck out. A letter from the New York Director of Licenses to Retail Credit assured it that its license in no way designated Retail Credit as a private detective agency.

10. Along with their brief, petitioners submitted proposed findings of fact, all of which have been adopted and incorporated herein.

CONCLUSIONS OF LAW

A. That, pursuant to authority granted under section 1212-A(h)(2)(1)(B) of the Tax Law, section BB46-2.0(a)(2) of the New York City Administrative Code imposes a tax upon receipts from every sale, except for resale, of:

"Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature, whether or not any tangible personal property is transferred in conjunction therewith, and except to the extent otherwise taxable under article twenty-eight of the tax law."

B. That the services provided to petitioners by Hooper Holmes and Equifax do not involve any protection or detection activities whatsoever. The services merely provide reports containing information on life insurance applicants, most of which information comes from the applicants themselves. The services provided are so far removed from the types of services specified in section BB46-2.0(a)(2) as to render the statute inapplicable to such services purchased

by petitioners. The purchase of the service of providing informational reports on life insurance applicants is, therefore, not subject to sales and use tax within the meaning and intent of the aforesaid section of the New York City Administrative Code.

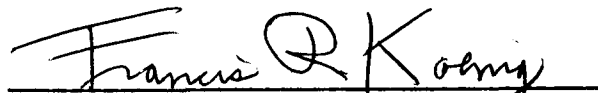
C. That the petitions of Metropolitan Life Insurance Company and Mutual Life Insurance Company of New York are granted and the notices of determination and demands for payment of sales and use taxes due issued August 12, 1981 and March 27, 1980, respectively, are cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 169 743

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to	<i>Mutual Life Ins Co</i>	
Street and No.	<i>20 Cherry Street 1740</i>	
P.O., State and ZIP Code	<i>Mail Box 17-23</i>	
Postage	<i>New York NY 10019</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 693 169 742

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to	<i>Arnold Panzer</i>	
Street and No.	<i>Roberts & Hubbard</i>	
P.O., State and ZIP Code	<i>30 Rockefeller Plaza</i>	
Postage	<i>New York NY 10112</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 693 169 741

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

3800, Feb. 1982

Sent to	<i>Metropolitan Life Ins Co</i>	
Street and No.	<i>One Madison Ave</i>	
P.O., State and ZIP Code	<i>New York NY 10017</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		