

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

SOQ, Broadcasting Corp.,  
Formerly WSOQ, Inc.

:

:

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 6/1/79 - 11/30/81.

:

:

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 23rd day of May, 1985, he served the within notice of decision by certified mail upon SOQ, Broadcasting Corp., Formerly WSOQ, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

SOQ, Broadcasting Corp.,  
Formerly WSOQ, Inc.  
Attn: Dennis Israel, Pres.  
P.O. Box 20  
N. Syracuse, NY 13212

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  
23rd day of May, 1985.

David Parchuck

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

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

May 23, 1985

SOQ, Broadcasting Corp.,  
Formerly WSOQ, Inc.  
Attn: Dennis Israel, Pres.  
P.O. Box 20  
N. Syracuse, NY 13212

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
SOQ BROADCASTING CORP., :  
formerly WSOQ, 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 June 1, 1979 :  
through November 30, 1981. :

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Petitioner, SOQ Broadcasting Corp., formerly WSOQ, Inc., P.O. Box 20, North Syracuse, New York 13212, 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 June 1, 1979 through November 30, 1981 (File No. 41177).

A small claims hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on November 29, 1984 at 10:45 A.M., with additional evidence to be submitted by December 28, 1984. Petitioner appeared by its president, Dennis R. Israel. The Audit Division appeared by John P. Dugan, Esq. (Patricia L. Braumbaugh, Esq., of counsel).

ISSUE

Whether petitioner's purchase of a consulting service which included the dubbing of music to tapes which were used at petitioner's radio station was subject to use tax.

FINDINGS OF FACT

1. On September 20, 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 WSOQ, Inc., the predecessor to petitioner SOQ Broadcasting

Corp., in the amount of \$4,778.47 plus interest of \$1,113.77 for a total due of \$5,892.24 for the period June 1, 1979 through November 30, 1981. On or about December 20, 1982, petitioner remitted payment of the tax and interest due. Petitioner then filed a petition requesting a refund of the tax and interest paid.

2. At a pre-hearing conference, the Audit Division agreed to an allowance for the tax assessed and paid on purchases which were delivered out of state; as a result, the total refund amount in issue is \$3,646.14 plus interest.

3. Petitioner owns and operates radio stations WEZG-AM and WSCY-FM in the Syracuse, New York area. On audit, the Audit Division determined that petitioner's purchase of a music consulting service which included a supply of taped musical selections was subject to use tax as the service of imprinting tangible personal property for a person who furnishes the tangible personal property. Petitioner maintains that the charge is for a non-taxable music service.

4. Schulke Radio Productions, Ltd. ("Schulke") is known in the radio industry as a programming consultant. Schulke provided its consulting services to petitioner during the period in issue for a monthly fee of \$1,700.00. The services provided by Schulke were numerous and varied. Schulke suggested sales and marketing strategies to the station including seasonal promotional activities. Schulke also gave advice concerning the type of personality the on-air announcers should have. Schulke provided engineering consultants who made suggestions for improving the sound quality of station broadcasts. Schulke also sent printed newsletters to its subscribers containing information on marketing, promotions and programming. Schulke consultants met with petitioner's program director to give advice regarding what music to play, how much news and weather reporting

to broadcast and various other programming concerns. Additionally, Schulke held one-day seminars at its New Jersey headquarters for station managers.

5. In addition to the aforementioned service, Schulke also provided a tape dubbing service which involved the taping of musical selections on tapes provided by the station. The tapes appear to have comprised virtually all of petitioner's musical programming. The redubbed tapes were sent to petitioner at irregular intervals depending on how often petitioner's program director and Schulke decided to update the program format. Several months could pass between redubbing of tapes. The tape dubbing service was included within the charge for the overall consulting agreement. The only time Schulke separately charged petitioner for a tape was on infrequent occasions when a broken or damaged tape was returned to Schulke for replacement. When this occurred there was a charge of approximately \$20.00 which was stated on a separate invoice. Occasionally, Schulke provided petitioner with prerecorded tapes of musical selections. There was no separate charge for such tapes.

6. The Audit Division assessed use tax on the entire \$1,700.00 monthly consulting fee because it determined that the tape dubbing was a taxable service the charge for which was not stated separately from the nontaxable services. It was impossible to determine from the record how much of the monthly fee was for tape dubbing and prerecorded tapes.

#### CONCLUSIONS OF LAW

A. That section 1105(c)(2) of the Tax Law imposes a tax on the sale of the service of

"Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which services are performed."


B. That the dubbing of music onto tapes furnished by a customer is a printing or imprinting service which is subject to tax within the meaning and intent of section 1105(c)(2) of the Tax Law. Likewise, the purchase of pre-recorded tapes is subject to tax as the purchase of tangible personal property under section 1105(a) of the Tax Law. Although the tapes were provided as part of the consulting service, they were a significant part of the service since the music contained thereon constituted virtually all of petitioner's music programming. Therefore, inasmuch as the service was composed of substantial amounts of taxable property and services mixed with nontaxable services sold at a single unit price, the tax is properly collected on the total price [cf. 20 NYCRR 527.1(b)].

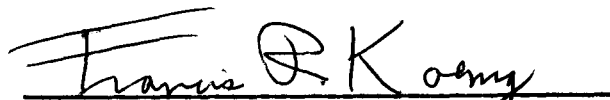
C. That the petition of SOQ Broadcasting Corp., formerly WSOQ, Inc., is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 20, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 693 169 880

**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	SOB Broadcasting Corp	
Street and No.	1502 ON	
P.O., State and ZIP Code	OH: Akron Cereail. p.w.	
Postage	PO Box 20	\$
Certified Fee	11. Signature NY 13212	
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		