

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Co Marco Data Services, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period 6/1/78 - 11/30/81.

State of New York :

ss.:

County of Albany :

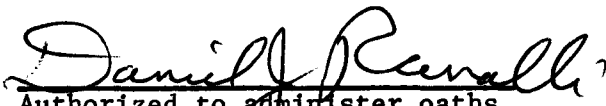
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 25th day of July, 1986, he/she served the within notice of Decision by certified mail upon Co Marco Data Services, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

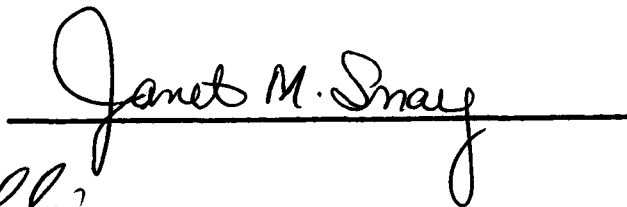
. Co Marco Data Services, Inc.
119 N. 24th Street
New York, NY 10011

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
25th day of July, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Co Marco Data Services, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period 6/1/78 - 11/30/81.

State of New York :
ss.:
County of Albany :

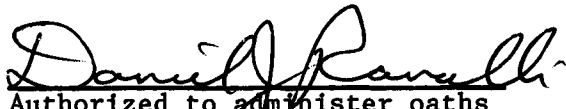
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 25th day of July, 1986, he served the within notice of Decision by certified mail upon Louis Engelmayer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis Engelmayer
225 Broadway
New York, NY 10007

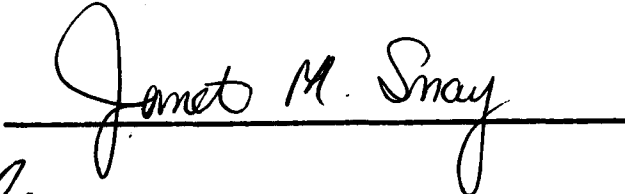
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
25th day of July, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



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

July 25, 1986

Co Marco Data Services, Inc.
119 N. 24th Street
New York, NY 10011

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Louis Engelmayer
225 Broadway
New York, NY 10007

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CO MARCO DATA SERVICES, 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, 1978	:	
through November 30, 1981.	:	

Petitioner, Co Marco Data Services, Inc., 119 North 24th Street, New York, New York 10011, 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, 1978 through November 30, 1981 (File No. 40096).

A formal hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on Tuesday, July 23, 1985 at 1:15 P.M., with all briefs to be submitted by September 23, 1985. Petitioner appeared by Louis Engelmayer, Esq. and Michael C. Lesser, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether keypunch services purchased by petitioner from independent contractors were purchased for resale and thereby excluded from the tax imposed under section 1105(c) of the Tax Law.

II. Whether double taxation will exist if petitioner is held liable for tax on its purchases of keypunch services.

FINDINGS OF FACT

1. On August 27, 1982, as a 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, Co Marco Data Services, Inc., for the period June 1, 1978 through November 30, 1981 in the amount of \$10,283.87, together with interest of \$2,594.84, for a total amount due of \$12,878.71. The assessment represented taxes due on purchases of keypunch services.

2. Petitioner, by its president, Jonathan Mack, executed three consents extending the period of limitation for assessment of sales and use taxes for the period September 1, 1978 through May 31, 1981 to December 20, 1982.

3. Petitioner was engaged in the business of processing, updating and maintaining mailing lists and supplying mailing labels and reports to its customers, the majority of which were publishers of magazines and periodicals.

4. Petitioner received data from its customers stored either on magnetic computer tape or as hard copy. This data was then converted to a format that was compatible with petitioner's computer system. The information maintained and updated by petitioner was the exclusive property of the customer. Petitioner provided its services under contracts with its customers. If a contract was terminated, the tape with all of its changes and modifications was returned to the customer.

5. Under a typical contract, petitioner updated the information, usually on a monthly or quarterly basis. Petitioner added new names, changed addresses, deleted non-deliverable names and produced address renewal notices and credit invoices. Petitioner also produced circulation data reports and mailing labels.

6. Petitioner's fee for its services was set by contract. Petitioner collected sales tax from its customers based upon the total price charged under each contract.

7. The customer provided petitioner with hard copy of the information to be added to the master file. Petitioner purchased keypunch services from independent contractors to convert the hard copy to computer readable punch cards. Petitioner provided the outside contractors with blank punch cards. The punch cards were fed into the computer and the data contained thereon was transferred onto magnetic tape. After this process was completed, the punch cards were destroyed.

8. Petitioner did not pay sales tax to the independent keypunch operators it contracted with during the audit period, nor did the independent keypunchers collect sales tax from petitioner for the services rendered.

9. Petitioner took the position that the keypunching services were purchased for resale since the data on the punch cards was transferred to a magnetic tape which was the property of the customer. Petitioner claimed that the punch card was merely the medium used to rearrange the data on the tape and that the cost for such services was reflected in the charge to the customer on which sales tax was collected. Petitioner further maintained that if tax was imposed on its purchases of keypunching services, it would result in double taxation since tax was collected from the customer on the same services.

CONCLUSIONS OF LAW

A. That section 1105(c)(2) of the Tax Law provides, in pertinent part:

"...[T]here is hereby imposed and there shall be paid a tax...upon:

* * *

(c) The receipts from every sale, except for resale of the following services:

* * *

(2) 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 such services are performed."

B. That the independent keypunch operators were performing services under section 1105(c)(2) of the Tax Law. However, the purchase of such services was not for resale within the meaning and intent of section 1105(c) of the Tax Law. The keypunch services were purchased by petitioner for use in providing to its customers the services set forth in Finding of Fact "3". Cf. Matter of Cut-Outs, Inc. v. State Tax Commission, 85 A.D.2d 838 (3rd Dept. 1981).

C. That inasmuch as the services at issue are taxable under section 1105(c)(2) of the Tax Law, the fact that petitioner may pass the cost of such taxation onto its customers is irrelevant. The provisions of the Tax Law authorize the imposition of tax both upon the keypunch services and upon the services petitioner furnishes its customers.

D. That the petition of Co Marco Data Services, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 27, 1982, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 25 1986

Rodwin A. Allen
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. [Signature]
COMMISSIONER

P 319 372 900

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to Co Marco Data Services Inc	
Street and No. 119 N. 24th St.	
P.O. State and ZIP Code New York, N.Y. 10011	
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	

P 319 372 901

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to Louis Engelmayer	
Street and No. 225 Broadway	
P.O. State and ZIP Code New York, N.Y. 10007	
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	