

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Florafax International, 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 12/1/77-11/30/80. :
:

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Florafax International, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Florafax International, Inc.
P.O. Box 45745
Tulsa, OK 74145

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
28th day of January, 1986.

David Parchuck

Connie A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
Florafax International, Inc.	:	
for Redetermination of a Deficiency or Revision	:	AFFIDAVIT OF MAILING
of a Determination or Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period 12/1/77-11/30/80.	:	

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, 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 28th day of January, 1986, he served the within notice of Decision by certified mail upon David A. Black, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David A. Black
Arthur Andersen & Co.
1345 Avenue of the Americas
New York, NY 10105

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
28th day of January, 1986.

David Parchuck

Connie A. Hagelund

Authorized to administer oaths
pursuant to Tax Law section 174

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

January 28, 1986

Florafax International, Inc.
P.O. Box 45745
Tulsa, OK 74145

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 A. Black
Arthur Andersen & Co.
1345 Avenue of the Americas
New York, NY 10105
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
FLORAFAX INTERNATIONAL, INC.
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

Petitioner, Florafax International, Inc., P.O. Box 45745, Tulsa, Oklahoma 74145, 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 December 1, 1977 through November 30, 1980 (File No. 39428).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1985 at 9:15 A.M., with all briefs to be submitted by July 20, 1985. Petitioner appeared by Arthur Andersen & Co. (David A. Black, C.P.A.). The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined that amounts charged by petitioner to its clients as maintenance fees, management fees, insurance fees and directory fees were subject to sales tax.

FINDINGS OF FACT

1. On December 18, 1981, subsequent to the conduct of a field examination, the Audit Division issued to petitioner, Florafax International, Inc. (hereinafter "Florafax"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due. Said Notice encompassed the period December 1, 1977 through November 30,

1980 and assessed additional sales and use taxes due of \$12,044.65,¹ plus interest of \$2,376.22, for a total amount due of \$14,420.87. On February 4, 1981, petitioner executed a consent to extend the period of limitations for assessment of sales and use taxes for the period December 1, 1977 through November 30, 1980 to any time on or before December 20, 1981.

2. Florafax is in the business of providing florists with the capability of sending flowers throughout the entire United States. To provide this capability, Florafax leases to its customers computer equipment, specifically a terminal and a modem.

3. Florafax used a standard rental or lease agreement entitled "System XXI Equipment Lease and Subscriber Agreement". Said agreement specifically and separately provided, inter alia, for the following charges:

- (i) a monthly fee of \$39.00 for the rental of the terminal and modem;
- (ii) a monthly maintenance fee of \$29.00;
- (iii) a monthly management fee of \$23.00;
- (iv) a monthly insurance fee of \$5.00; and
- (v) a monthly directory fee of \$3.00.

4. Florafax considered the basic monthly rental fee of \$39.00 as a receipt subject to sales tax. It therefore charged its New York State-based customers sales tax on the \$39.00 basic rental fee and remitted same to the Audit Division. The four remaining elements of the rental or lease agreement enumerated in Finding of Fact "3", supra, were considered by Florafax as exempt

1 \$1,509.33 of the assessment represents tax due as the result of undercollections. Petitioner does not contest this amount. The balance, i.e. \$10,535.32, represents tax due on maintenance fees, management fees, insurance fees and directory fees and the taxable status of said fees constitute the only items in dispute in this proceeding.

from sales tax. The Audit Division determined that the four remaining elements of the rental or lease agreement constituted taxable receipts and said determination forms the basis for the issuance of the aforementioned Notice of Determination and Demand for Payment of Sales and Use Taxes Due.

5. (a) The monthly maintenance fee is a charge for a repair and maintenance service on the rented computer equipment. All equipment requiring service is shipped to petitioner's warehouse in Oklahoma where necessary repairs are performed. The customer is furnished with a replacement unit and the defective unit, once repaired, is placed in inventory. Petitioner maintains that the maintenance fee is exempt from sales tax since all repair services are performed outside New York and since the repaired unit is not returned to the New York State customer and, in fact, may never return to New York.

(b) The monthly management fee is a charge for bookkeeping services performed by Florafax in Oklahoma. Petitioner maintains that said services do not fall within any of the taxable services enumerated in section 1105(c) of the Tax Law.

(c) The monthly insurance fee is an optional charge for property and casualty insurance on the computer terminal located on the customer's premises. Petitioner asserts that the insurance charge is not taxable since it is not one of the specifically enumerated taxable services under section 1105(c) of the Tax Law.

(d) The monthly directory fee is also an optional charge for listing the customer's name in a directory provided to all Florafax subscribers. Petitioner contends that this is a charge for advertising services and therefore exempt from tax.

6. The monthly invoices issued by Florafax to its customers did not show

an individual charge for each of the items in dispute herein, but rather a combined charge of \$99.00. As previously stated, petitioner collects sales tax from its New York-based customers only on the \$39.00 basic rental charge.

CONCLUSIONS OF LAW

A. That the standard equipment lease and subscriber agreement utilized by Florafax specifically and individually provided for a separate charge for:

- (i) rental of computer equipment;
- (ii) a maintenance fee;
- (iii) a management fee;
- (iv) an insurance fee; and
- (v) a directory fee.

In the instant matter, it is conceded that the charge for the rental or lease of the computer equipment constituted a taxable receipt under section 1105(a) of the Tax Law. The four remaining charges are not expenses incurred by petitioner in making a sale [20 NYCRR 526.5(e)], but instead represent separate and reasonable charges for separate and distinct services. Accordingly, the taxable status of the four remaining elements of the agreement are to be determined individually.

B. That the maintenance fee charged by Florafax constituted a taxable transaction pursuant to section 1105(c)(3) of the Tax Law and 20 NYCRR 527.5(a)(3).

C. That the management fee, insurance fee and directory fee do not fall within any of the taxable services enumerated in section 1105(c) of the Tax Law and were therefore properly considered by petitioner as exempt from tax.


D. That the petition of Florafax International, Inc. is granted to the extent indicated in Conclusion of Law "C", supra; that the Audit Division is

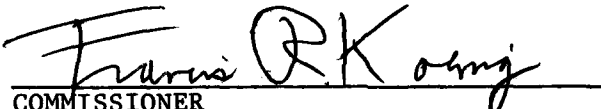
directed to recompute the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 18, 1981 consistent with the conclusions rendered herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 684 313 193

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 <u>Florajay International</u>	
Street and No. <u>P.O. Box 45745</u>	
P.O., State and ZIP Code <u>Tulsa, OK 74145</u>	
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 684 313 194

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 <u>David A. Black</u>	
Street and No. <u>Arthur Anderson & Co.</u>	
P.O., State and ZIP Code <u>1345 Ave of the Americas</u>	
<u>New York, NY 10105</u>	
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	