

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Steelcase, 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 12/1/78-11/30/81. :
_____:

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 3rd day of July, 1986, he/she served the within notice of Decision by certified mail upon Steelcase, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steelcase, Inc.
1120 36th St. S.E.
Grand Rapids, MI 49508

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
3rd day of July, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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_____ :

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 3rd day of July, 1986, he served the within notice of Decision by certified mail upon Paul T. Sorensen, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul T. Sorensen
Warner, Norcross & Judd
900 Old Kent Bldg., One Vandenberg Center
Grand Rapids, MI 49503

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
3rd day of July, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 3, 1986

Steelcase, Inc.
1120 36th St. S.E.
Grand Rapids, MI 49508

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:
Paul T. Sorensen
Warner, Norcross & Judd
900 Old Kent Bldg., One Vandenberg Center
Grand Rapids, MI 49503

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| STEELCASE, 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 December 1, 1978 | : | |
| through November 30, 1981. | : | |

Petitioner, Steelcase, Inc., 1120 36th Street S.E., Grand Rapids, Michigan 49508, 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, 1978 through November 30, 1981 (File No. 43029).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on November 18, 1985 at 1:15 P.M., with all briefs to be submitted by April 16, 1986. Petitioner appeared by Warner, Norcross & Judd, Esqs. (Paul T. Sorensen, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner's sales of office furniture and systems to independent retailers were sales for resale.

II. Whether, absent a New York resale certificate in the form prescribed by the State Tax Commission, petitioner may, nonetheless, satisfy its burden of proving that certain sales were for resale, thereby exempting said sales from the imposition of New York State and local sales taxes.

III. Whether, if deemed not sales for resale, petitioner's sales of office furniture and systems to retailers outside New York are, nonetheless, exempt from New York State and local sales taxes by virtue of the fact that said furniture and systems were delivered by common carrier to New York branch offices of the retailer's customer, pursuant to the retailer's direction.

IV. Whether, if said sales are determined to be subject to the imposition of New York State and local sales taxes, such imposition constitutes an impermissible burden on interstate commerce and is, therefore, violative of Article I, Section 8 of the Constitution of the United States.

FINDINGS OF FACT

On December 17, 1985, the parties herein entered into a written Stipulation of Facts, the contents of which are summarized in Findings of Fact "1" through "15".

1. Steelcase is a manufacturer of office furniture and systems with its headquarters and principal place of business in Grand Rapids, Michigan. The company maintains additional manufacturing and warehousing facilities at various sites outside the State of Michigan. None of those facilities are located in the State of New York.

2. During the time period relevant to the audit, Steelcase maintained several places of business in New York, including a showroom in New York City. The company is registered to do business in New York and holds a New York State Certificate of Authority.

3. Steelcase sells its products to certain independent retail office furniture dealers around the country (the "retailers"). All of the retailers who carry Steelcase products also carry products manufactured by many other office furniture companies. The retailers have their own customers who purchase

office furniture. If the customer chooses Steelcase furniture, the retailer sells him the goods the retailer has purchased from Steelcase. The customer generally pays the retailer, not Steelcase. If the customer ever fails to pay, it is the retailer who must collect, not Steelcase. The customer instructs the retailer where to deliver the goods. Sometimes the retailer then directs Steelcase to ship the goods to the retailer for storage in the retailer's showroom or warehouse pending future delivery to the customer's site; other times the retailer instructs Steelcase to ship the goods directly to the retailer's customer. The goods are generally shipped by common carrier, F.O.B. shipping point from Steelcase's manufacturing or warehousing facilities, and the shipping charges are always incurred by the selling retailer.

4. Steelcase has not collected or paid New York sales tax on sales made to retailers located outside New York where the goods are delivered by common carrier to New York branch offices of the retailer's customer, pursuant to the retailer's direction.

5. On or about December 20, 1982, the Department issued to Steelcase a Notice of Determination and Demand for Payment of Sales and Use Taxes Due (the "Notice") for the period of December 1, 1978 through November 30, 1981, in the total amount of \$78,494.72 (including the principal amount of \$61,850.70 in sales taxes and \$16,644.02 in interest through the date of issuance). The assessment included sales taxes allegedly due for initiating the shipment of goods into New York by common carrier based on sales made by Steelcase to retailers located outside the State of New York who resold to end-users with New York branch offices, and leasehold improvements to a showroom in New York City.

6. The Department based the Notice on an audit conducted by its Midwestern Regional Office, located in Rosemont, Illinois.

7. On March 18, 1983, Steelcase timely filed its Petition protesting the \$78,494.72 assessment under the provisions of Section 1138 of the Tax Law for the period of December 1, 1978 through November 30, 1981.

8. On or about August 2, 1983, the Department issued a Notice of Assessment Review which reduced the amount claimed to \$78,082.53, including \$58,650.70 in tax due, and minimum interest of \$19,431.83 (as of August 9, 1983). The reduction occurred because the Department no longer claimed sales tax due for the leasehold improvements portion of the initial assessment.

9. The Department's assessment does not claim that Steelcase is liable for use taxes.

10. As indicated by each invoice included in the audit, all products purchased by the end-user, outside the State of New York, were shipped to one of the end-user's branch offices located in the State of New York by common carrier, F.O.B. shipping point.

11. None of the goods sold in the transactions included in the audit were shipped in vehicles owned by Steelcase.

12. The freight charges for shipment of the goods to the end-users' New York branch offices were incurred by Steelcase's purchaser, the independent retailer, and not Steelcase. The expense was directly included in the cost of goods purchased by the retailer.

13. Under the terms of the sales contracts between Steelcase and each of the retailers included in the audit, the retailer took title to the product when it was delivered by Steelcase to the common carrier at shipping points

located outside the State of New York. The retailer held title and risk of loss until the goods were delivered by the common carrier to the end-user's New York branch office.

14. The retailers made all necessary arrangements for unloading the product from the common carrier's vehicle at the end-user's New York delivery points.

15. The sales taxes at issue are based on the price of sales at wholesale between Steelcase and the independent retail dealers located outside the State of New York. The sales taxes at issue are not based on the price of retail sales between the retailers and their customers.

16. Petitioner executed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law agreeing that sales and use taxes due from petitioner for the periods December 1, 1978 through August 31, 1979 may be assessed at any time on or before December 20, 1982.

17. Petitioner does not contest use tax assessed on its capital asset purchases in the amount of \$4,401.11 and, furthermore, does not contest assessment of sales tax on its direct sales to Allstate offices in New York State in the amount of \$6,642.81. Petitioner, therefore, paid the sum of \$18,970.44 (\$11,043.92 tax due plus interest, computed through January 31, 1986, in the amount of \$7,926.52).

18. With respect to all sales which are the subject of this audit, said sales occurred outside New York State, i.e., negotiations between the retailer and petitioner occurred outside New York State and negotiations between the retailer and its customer occurred outside New York State. For all of said transactions, the retailers provided petitioner with resale certificates which

were in compliance with the statutes and regulations of the state where each said retailer maintained its place of business.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law generally provides for the imposition of sales tax upon "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

B. That section 1101(b)(4)(i) of the Tax Law defines retail sales as "[a] sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property...".

C. That section 1132(c) of the Tax Law, in effect for the years at issue, provided, in pertinent part, as follows:

"For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five, ..., are subject to tax until the contrary is established, and the burden of proving that any receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Unless (1) a vendor shall have taken from the purchaser a certificate in such form as the tax commission may prescribe, signed by the purchaser and setting forth his name and address and, except as otherwise provided by regulation of the tax commission, the number of his registration certificate, together with such other information as said commission may require, to the effect that the property or service was purchased for resale..., the sale shall be deemed a taxable sale at retail."

D. That the Appellate Division, Third Department, in Matter of RAC Corporation v. Gallman, 331 N.Y.S.2d 945, 39 A.D.2d 57, 60 (1972), stated:

"Both the form and substance of the transaction should be considered. The certificate given to the petitioner, though inartfully expressed and clearly lacking compliance with subdivision (c) of section 1132, in its present form, met the statutory requirements then imposed. All that was required was that the certificate contain a statement to the effect that the property was purchased for resale, and this the subject certificate does."

E. That, with regard to all of petitioner's sales herein, affidavits and resale certificates were provided by retailers and dealers of petitioner's office furniture and systems to show that all of petitioner's sales to said retailers and dealers were sales for resale. Although the affidavits and resale certificates were not in strict compliance with the provisions of section 1132(c) of the Tax Law and the regulations of the State Tax Commission promulgated in accordance therewith, said affidavits and resale certificates contained such information as to sufficiently enable petitioner to sustain its burden of proof that each of its sales herein were sales for resale and, as such, were exempt from the imposition of sales tax under Articles 28 and 29 of the Tax Law.


F. That in view of Conclusion of Law "E", supra, Issues III and IV herein are rendered moot.

G. That the petition of Steelcase, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1982 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

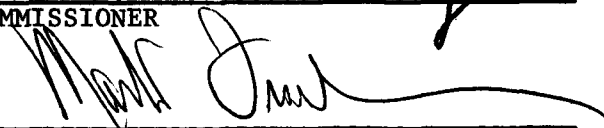
JUL 03 1986



PRESIDENT



COMMISSIONER



COMMISSIONER