

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MERKEL BROS., INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year(s) or Period(s) :
September 1, 1972 through August 31, 1975

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Merkel Bros., Inc.

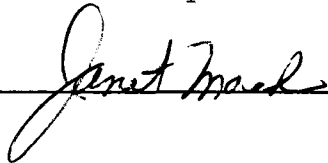
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Merkel Bros., Inc.
6835 Fresh Pond Road
Ridgewood, New York 11227

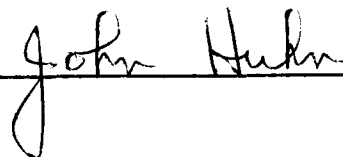
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~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

29th day of September, 1977.





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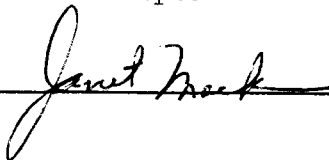
(representative of) the petitioner in the within proceeding,
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as follows: John J. Cain, P.A.
69-40 Myrtle Avenue
Glendale, New York 11227

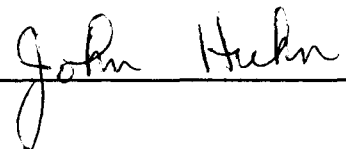
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Sworn to before me this

29th day of September, 1977.







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

September 29, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Merkel Bros., Inc.
6835 Fresh Pond Road
Ridgewood, New York 11227

Gentlemen:

Please take notice of the **Determination**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MERKEL BROS., INC.	:	DETERMINATION
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 September 1, 1972 through	:	
August 31, 1975.	:	

Applicant, Merkel Bros., Inc., 6835 Fresh Pond Road, Ridgewood, New York 11227, filed an application 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 September 1, 1972 through August 31, 1975. (File No. 16348).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 25, 1977 at 1:15 P.M. Applicant appeared by John J. Cain, Public Accountant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the charges made by the applicant for wardrobe cartons which were used in its local and long distance moving operation constituted charges for the rental of tangible personal property.

FINDINGS OF FACT

1. On May 21, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Merkel Bros., Inc. for the period September 1, 1972 through August 31, 1975.

2. Applicant signed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law on November 21, 1975, covering the taxable period September 1, 1972 through August 31, 1975.

3. The Sales Tax Bureau audited the applicant's books and records for the period September 1, 1972 through August 31, 1975 and determined that additional sales tax was due in the sum of \$958.39. This additional tax due resulted from the Sales Tax Bureau's assertion that charges made by the applicant for wardrobe cartons were taxable rental receipts.

4. The applicant, Merkel Bros., Inc., operates a moving, packing and storage business. In the operation of its business, it is occasionally necessary to use a wardrobe carton for which the applicant bills its customer an additional charge of \$3.00 per carton. The wardrobe cartons are constructed of particle board or ply score and are used several times by the applicant. The wardrobe cartons are owned and used by Merkel Bros., Inc. These cartons are used only by Merkel Bros., Inc., and are not used by the customers. They do not become the property of the customer.

5. Applicant paid sales tax on the materials used to construct the wardrobe cartons.

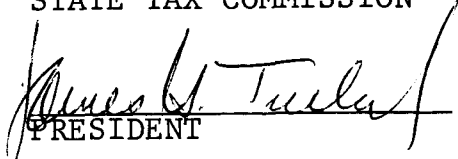
CONCLUSIONS OF LAW

A. That the charges made by the applicant for wardrobe cartons are not charges for the rental of tangible personal property and are, therefore, not "sales" within the meaning and intent of section 1101(b)(5) of the Tax Law.

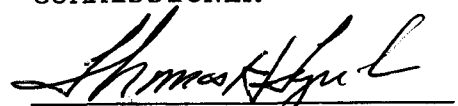
B. That the application of Merkel Bros., Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 21, 1976 is cancelled.

DATED: Albany, New York
September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER