

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT E. KESEL

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)~~ Period ~~(s)~~ :
1972 through 1975.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December, 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Robert E. Kesel

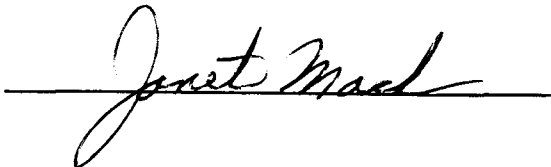
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Mr. Robert E. Kesel
94 Royleston Road
Rochester, New York 14609

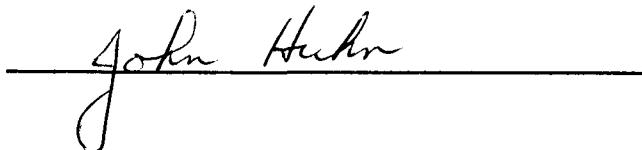
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of December, 19 77







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

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

December 13, 1977

**Mr. Robert E. Kesel
94 Royleston Road
Rochester, New York 14609**

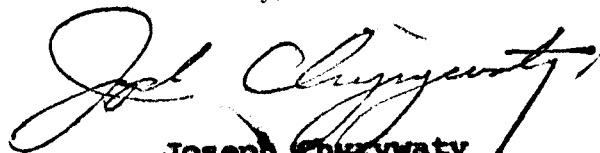
Dear Mr. Kesel:

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) **1139 & 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 Chyzywaty
Hearing Examiner**

cc: ~~Robert E. Kesel~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ROBERT E. KESEL	:	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 1972 through 1975.	:	

Applicant, Robert E. Kesel, 94 Royleston Road, Rochester, New York 14609, 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 1972 through 1975 (File No. 11098).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 12, 1977 at 9:15 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the applicant is entitled to a refund of sales tax paid on shipping charges, where the invoices combined such charges with handling charges.

FINDINGS OF FACT

1. On April 11, 1975, applicant, Robert E. Kesel, filed an application for credit or refund of state and local sales or use tax. This claim was made on the grounds that sales tax was charged on "shipping and handling" which the applicant contended included United States postage.

2. The Sales Tax Bureau denied the refund on the grounds that the shipping charges were not separately stated on the invoices but rather were combined in one amount labeled "shipping and handling" charges.

3. During the period at issue, applicant, Robert E. Kesel, purchased 49 books from Time-Life Books of Chicago, Illinois. The following invoice is typical of the invoices which applicant received from Time-Life Books:

<u>Title</u>	<u>Price</u>
THE TOWNSMEN	\$7.95
Shipping and Handling	<u>.96</u>
Total Product Price	\$8.91
Applicable Tax	<u>.62</u>
TOTAL DUE	\$9.53

4. The books were shipped to applicant via the United States Postal Service in cardboard cartons which bore the legends "U.S. Postage Paid Time, Inc." and "Special Fourth-Class Rate-Books".

5. Applicant admitted that he was unable to document the total amount of the shipping charges or postage involved.

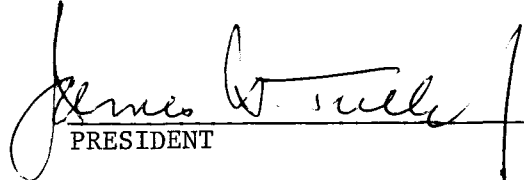
CONCLUSIONS OF LAW

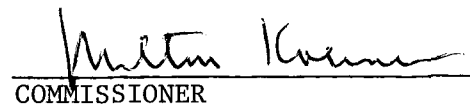
A. That the shipping charges or any amounts representing shipping charges were not separately stated on the invoice or bill rendered to the applicant, Robert E. Kesel, as required by section 1101(b)(3) of the Tax Law. Therefore, the total sales price is subject to the imposition of sales tax within the meaning and intent of section 1105(a) of the Tax Law.

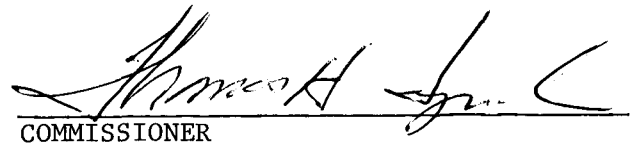
B. That the application of Robert E. Kesel is denied.

DATED: Albany, New York
December 13, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER