

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Florence Gross :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Sales & Use Tax :

under Article 28 of the Tax Law

for the Period 6/1/75-8/31/76. :

State of New York

County of Albany

Jay Vredenburg, 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 28th day of September, 1979, he served the within notice of Determination by mail upon Florence Gross, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Florence Gross

39 Darling Ave. N.

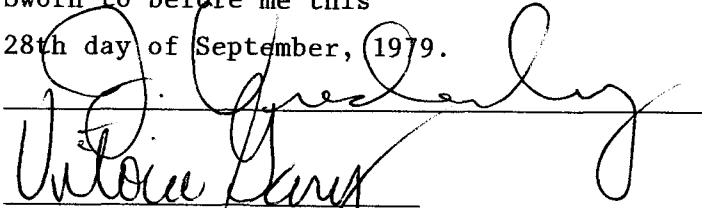
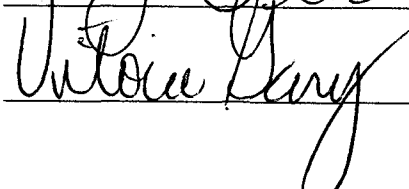
New Rochelle, NY 10804

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 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 September, 1979.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Florence Gross
39 Darling Ave. N.
New Rochelle, NY 10804

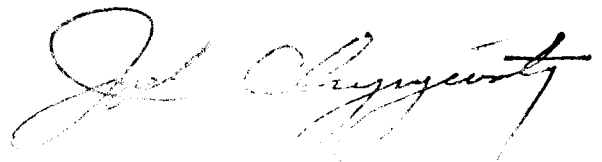
Dear Ms. Gross:

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,

A handwritten signature in dark ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
FLORENCE GROSS : 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 August 1975 :
through August 1976. :
:

Applicant, Florence Gross, 39 Darling Avenue, New Rochelle, New York 10804, 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 August 1975 through August 1976 (File No. 17178).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 11, 1978. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund of sales tax paid on purchases of books which were subsequently mailed out of the country.

FINDINGS OF FACT

1. On August 26, 1976, applicant, Florence Gross, filed an Application for Credit or Refund of State and Local Sales or Use Tax (Form ST-137) for the period August 1975 through August 1976, in the amount of \$41.04. Applicant claimed a refund of sales tax paid on purchases of books which she shipped to Mexico.

2. On September 21, 1976, the Sales Tax Bureau informed applicant that her claim for refund was denied in full since the purchase of tangible personal property in New York State, where the purchaser takes possession in New York, is taxable.

3. By letter dated September 21, 1976, applicant requested a hearing to review the denial of her refund claim.

4. Applicant stated that her son was a medical student in Mexico and could not obtain the required medical books in that country. Applicant purchased and took delivery of the required medical books in New York State, paid the sales tax thereon, and then shipped the books by mail to her son in Morales, Mexico.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax upon the receipts from every retail sale of tangible personal property.

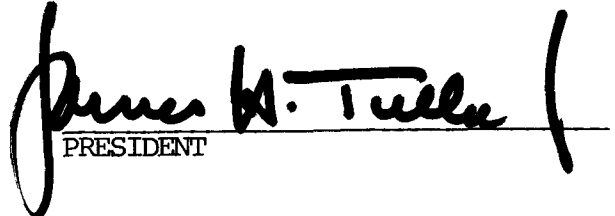
B. That the purchases of the books by applicant, Florence Gross, was a retail sale of tangible personal property, subject to tax under section 1105(a) of the Tax Law.

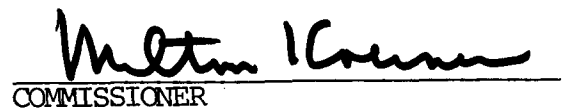
C. That the application of Florence Gross is denied and the Notice of Refund Denial dated September 21, 1976 is sustained.

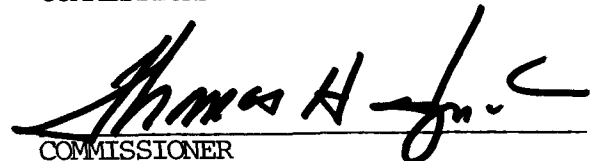
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER