

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KATHERINE SEWELL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period ~~(s)~~ :
January 1966 through December 1969.

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 14th day of February , 1979, ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Katherine Sewell
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Katherine Sewell
140 East 63rd St.
New York, New York 10021

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.

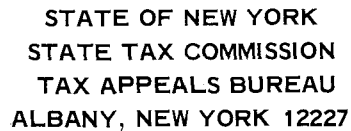
That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~of the~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

14th day of February , 1979.

Marilyn J. Papereau

John Huhn




February 14, 1979

Dear Ms. Sewell:

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(x)~~ **690** 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

~~CONFIDENTIAL - SECURITY INFORMATION~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
KATHERINE SEWELL : 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 January, 1966 through :
December, 1969. :

Applicant, Katherine Sewell, 140 East 63rd Street, New York, New York 10021, 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 January, 1966 through December, 1969 (File No. 01378).

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 March 10, 1978. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund of sales tax paid on purchases of oil colors, frames, film and other artist supplies.

FINDINGS OF FACT

1. On December 24, 1969, applicant, Katherine Sewell, filed an Application for Credit or Refund of State and Local Sales or Use Tax

in the amount of \$362.59, representing sales taxes paid on purchases of oil colors, frames, film and other artist supplies during the period January, 1966 through December, 1969.

2. Applicant contended that the above items were purchased for resale to her customers. On April 16, 1970, the Sales Tax Bureau denied applicant's refund claim. Applicant timely filed an Application for a Hearing to review the Sales Tax Bureau's denial of her claim.

3. During the period at issue, applicant sold one painting. Said sale took place on May 29, 1967, and the sales tax due thereon was remitted to the Sales Tax Bureau on July 27, 1970. Applicant did not register as a vendor with the Sales Tax Bureau until October 10, 1969.

4. Applicant did not present any documentary or other evidence to show that the oil colors, frames, film and other artist supplies were purchased for resale.

CONCLUSIONS OF LAW

A. That applicant failed to sustain the burden of proof required to show that the oil colors, frames, film and other artist supplies were purchased for resale as such, or as a physical component part of tangible personal property within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law. Applicant was, therefore, liable for sales tax on said items, pursuant to section 1105(a) of the Tax Law.

B. That the application of Katherine Sewell is denied and
Notice of Refund Denial, dated April 16, 1970, is sustained.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER

STATE TAX COMMISSION

Applicant, Katherine Sewell, 140 East 63rd Street, New York, New York 10021, 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 January, 1966 through December, 1969 (File No. 01378).

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 March 10, 1978. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

Whether applicant is entitled to a refund of sales tax paid on purchases of oil colors, frames, film and other artist supplies.

1. On December 24, 1969, applicant, Katherine Sewell, filed an Application for Credit or Refund of State and Local Sales or Use Tax

in the amount of \$362.59, representing sales taxes paid on purchases of oil colors, frames, film and other artist supplies during the period January, 1966 through December, 1969.

2. Applicant contended that the above items were purchased for resale to her customers. On April 16, 1970, the Sales Tax Bureau denied applicant's refund claim. Applicant timely filed an Application for a Hearing to review the Sales Tax Bureau's denial of her claim.

3. During the period at issue, applicant sold one painting. Said sale took place on May 29, 1967, and the sales tax due thereon was remitted to the Sales Tax Bureau on July 27, 1970. Applicant did not register as a vendor with the Sales Tax Bureau until October 10, 1969.

4. Applicant did not present any documentary or other evidence to show that the oil colors, frames, film and other artist supplies were purchased for resale.

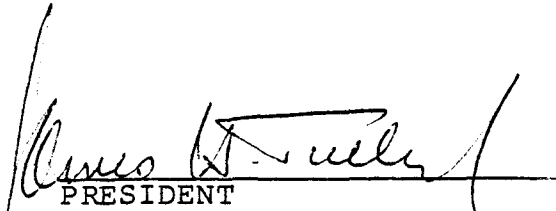
CONCLUSIONS OF LAW

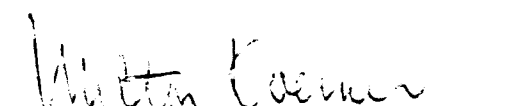
A. That applicant failed to sustain the burden of proof required to show that the oil colors, frames, film and other artist supplies were purchased for resale as such, or as a physical component part of tangible personal property within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law. Applicant was, therefore, liable for sales tax on said items, pursuant to section 1105(a) of the Tax Law.

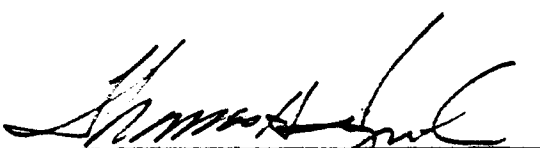
B. That the application of Katherine Sewell is denied and
Notice of Refund Denial, dated April 16, 1970, is sustained.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER