

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Keuffel & Esser Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the Period:
12/1/72 - 8/31/76. :
_____:

State of New York
County of Albany

Connie Hagelund, 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 9th day of April, 1982, she served the within notice of Decision by certified mail upon Keuffel & Esser Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Keuffel & Esser Co.
20 Whippany Rd.
Morristown, NJ 07960

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
9th day of April, 1982. _____

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Keuffel & Esser Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 12/1/72 - 8/31/76 :
_____ :

State of New York
County of Albany

Connie Hagelund, 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 9th day of April, 1982, she served the within notice of Decision by certified mail upon Hurdman & Cranston, CPA's the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hurdman & Cranston, CPA's
Gateway 1
Newark, NJ 07102

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 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
9th day of April, 1982.

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

April 9, 1982

Keuffel & Esser Co.
20 Whippany Rd.
Morristown, NJ 07960

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 & 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Hurdman & Cranston, CPA's
Gateway 1
Newark, NJ 07102
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KEUFFEL & ESSER COMPANY	:	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,	:	
1972 through August 31, 1976.	:	

Petitioner, Keuffel & Esser Company, 20 Whippany Road, Morristown, New Jersey 07960, 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, 1972 through August 31, 1976 (File Number 18560).

A formal hearing was held before Edward Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 19, 1979 at 9:15 A.M. Petitioner appeared by John J. Plaskon, CPA of Hurdman & Cranstoun, CPA's. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether certain chemicals purchased by petitioner become a component part of a finished product so as to be excluded from the definition of retail sale as found in the sales and use tax law by reason of being a purchase for resale.

FINDINGS OF FACT

1. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued against petitioner on February 18, 1977. It is for the period December 1, 1972 through August 31, 1976 and is in the amount of \$49,452.06, plus penalty and interest of \$20,955.68, for a total of \$70,407.74.

2. Petitioner's offices are at 20 Whippany Road, Morristown, New Jersey. It has a plant at Taconic, New York at which Herculene and Stabilene coated products are produced.

3. Herculene is a static free drafting film. It is specially coated so that it does not attract or adhere to itself, other media, dust or eraser particles. It also will not tear, soak up grease, is permanently transparent, waterproof and resists cracking. Ordinary film does not have these properties. In order to have these properties, a carefully engineered coating tightly locked to the base film must be produced. This coating is produced from a mixture of twenty-five different chemical ingredients, based on specific, highly confidential, formulas.

4. Stabilene is a drafting and reproduction medium of extremely high dimensional stability. It is polyester film that has been restabilized to set its molecular structure. There are more than 35 types of surfaces and coatings for this stable base film. Over thirty different chemical ingredients are used to produce these various coatings.

5. At least 22 of the chemicals purchased by petitioner and which are the subject of this case are classified by standard chemical dictionaries as "solvents". These solvents are an integral part of both processes and product formation and from 0.1 percent to 3.5 percent of the solvents remain as part of the finished product.

6. One of the chemicals upon which the determination in this matter is based is a resin all of which becomes a physical component part of the finished products produced. The chemical is cellulose acetate and purchases for the period of the determination totaled \$39,835.64.

CONCLUSIONS OF LAW

A. That a retail sale is defined in Tax Law section 1101(b)(4)(i) 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 for tangible personal property...".

B. That while only small amounts of a chemical may remain in the finished product, the degree of consumption was not made a statutory factor and the ordinary meaning of a "component" is broad enough to include detectable traces contained in the finished whole (Finch, Pruyn & Co., Inc. v. Tully 69 A.D.2d 192 (1979)).

C. That petitioner, Keuffel & Esser Company, has, in fact, shown that the percentage of solvents remaining in the various products offered for sale range from 0.1 percent to 3.5 percent, and that all the resin becomes a physical component part.

D. That the petition of Keuffel & Esser Company is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 18, 1977 is cancelled.

DATED: Albany, New York

APR 09 1982

STATE TAX COMMISSION

James W. Tuller
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER