

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
World Book Childcraft International, Inc. : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the Period:  
12/1/76 - 2/29/80.

\_\_\_\_\_  
State of New York }  
ss.:  
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 2nd day of May, 1984, he served the within notice of Decision by certified mail upon World Book Childcraft International, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

World Book Childcraft International, Inc.  
c/o Bud Ross  
510 Merchandise Mart Plaza  
Chicago, IL 60654

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
2nd day of May, 1984.

David Parchuck

Annice A. Haylund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
World Book Childcraft International, Inc. : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the :  
Period 12/1/76 - 2/29/80. :

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State of New York }  
ss.:  
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 2nd day of May, 1984, he served the within notice of Decision by certified mail upon Robert W. Kleinman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert W. Kleinman  
Isham, Lincoln & Beale  
Three First National Plaza  
Chicago, IL 60603

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
2nd day of May, 1984.

David Parchuck

James A. Hayek  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

May 2, 1984

World Book Childcraft International, Inc.  
c/o Bud Ross  
510 Merchandise Mart Plaza  
Chicago, IL 60654

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 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Robert W. Kleinman  
Isham, Lincoln & Beale  
Three First National Plaza  
Chicago, IL 60603  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WORLD BOOK CHILDCRAFT INTERNATIONAL, INC.	:	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, 1976	:	
through February 29, 1980.	:	

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Petitioner, World Book Childcraft International, Inc., 510 Merchandise Mart Plaza, Chicago, Illinois 60654, 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, 1976 through February 29, 1980 (File No. 31929)

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 13, 1983 at 2:10 P.M., with all briefs to be submitted on or before April 18, 1983. Petitioner appeared by Isham, Lincoln & Beale (Robert W. Kleinman, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner is obligated to collect and remit sales and use tax with respect to sales ordered outside of New York as gifts to be delivered by petitioner to New York residents.

FINDINGS OF FACT

1. Petitioner is a firm whose principal business activity is the publication and distribution of encyclopedias. Petitioner solicits orders for its products through independent commissioned representatives in New York and forty-six

other states. Orders received by petitioner's representatives are forwarded to petitioner's headquarters in Chicago, Illinois. If petitioner accepts the order, the encyclopedias are shipped through the mails or through other instrumentalities of interstate commerce directly to the purchaser or the purchaser's designee from binderies located outside the State of New York. Petitioner, as an agent for New York State and on behalf of New York residents, collects and remits to the Department of Taxation and Finance New York use tax on orders received from residents of New York State for use or consumption in the State of New York.

2. On September 20, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period December 1, 1976 through February 29, 1980. The Notice assessed a tax due of \$44,905.33, plus interest of \$7,689.35, for a total amount due of \$52,594.68. To the extent at issue herein, the Notice was based upon an asserted sales and use tax liability arising from the sale of petitioner's products to out-of-state residents as gifts which were shipped to New York State residents.

3. In order to determine the amount of tax liability purportedly due from these transactions, the auditor requested all of petitioner's invoices. Petitioner replied that there was no practical or inexpensive way to furnish the auditor with its invoices. Therefore, the auditor and petitioner agreed to estimate petitioner's tax liability on the basis of available information. On the basis of information supplied by petitioner, the sum of \$535,406.17, representing 5.35 percent of petitioner's total national interstate gift sales, was determined to be due to gifts that were delivered in New York. This resulted in sales and use tax liability of \$38,549.16.

4. Petitioner is incorporated in Delaware and maintains its headquarters in Chicago. It has no facilities in New York State.

5. During the periods in issue, petitioner was a registered vendor in New York State and, throughout the periods in issue, filed New York State sales and use tax returns.

#### CONCLUSIONS OF LAW

A. That the term "'vendor' includes...(a) person making sales of tangible personal property..., the receipts of which are taxed by..." Article 28 of the New York Tax Law [Tax Law §1101(b)(8)(i)(A)]. Section 1131(1) of the Tax Law defines "[p]ersons required to collect tax" and "person required to collect any tax imposed by this article" to include every vendor of tangible personal property or services.

B. That 20 NYCRR 526.10(d)(1) provides:

"(d) Soliciting business. (1) a person is deemed to be soliciting business if he has employees, salesmen, independent contractors, promotion men, missionary men, service representatives or agents soliciting potential customers in the State".

C. That 20 NYCRR 526.10(e)(1) provides:

"(e) Interstate vendors. (1) A person outside of this State making sales to persons within the State, who solicits the sales in New York, as defined in subdivision (d) of this section, or who maintains a place of business as defined in subdivision (c) of this section, is required to collect the sales tax on the tangible personal property delivered in New York or the services performed in New York."

D. That by virtue of Tax Law sections 1101(b)(8)(i)(A) and 1131(1) and 20 NYCRR 526.10 (d)(1) and (e)(1), petitioner is a vendor required to collect sales tax.

E. That the New York sales tax is both a "transactions tax" and a "destination tax" (20 NYCRR 525.2(a)(2) and (a)(3)). Liability for the sales tax arises at

the time of the transaction (20 NYCRR 525.2(a)(2)). Moreover, "...the point of delivery or the point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate." (20 NYCRR 525.2(a)(3). Since the books were transferred to the purchaser's designee in New York, the Audit Division properly determined that New York sales tax should have been collected.

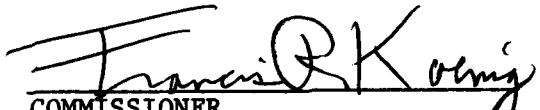
F. That the petition of World Book Childcraft International, Inc. is denied.

DATED: Albany, New York

MAY 12 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 440 977 019

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED--  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	<i>Art. W. Fleunman</i>
Street and No.	<i>1400 N. Lincoln Ave</i>
City, State and ZIP Code	<i>Chicago, Ill. 60603</i>
Postage	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	
Postmark or Date	

PS Form 3800, Feb. 1982

P 440 977 018

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED--  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	<i>World Bank Building</i>
Street and No.	<i>400 Broad St</i>
City, State and ZIP Code	<i>510 Merchandise Mart Chicago, Ill. 60654</i>
Postage	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982