

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WEIL & CO., INC.

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 ~~XXXXXX~~ Period(s) Ended :  
August 31, 1972 and February 28, 1974.

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 ~~(XXXXXX)~~ mail upon Weil & Co., Inc.

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Weil & Co., Inc.  
37-43 West 14th Street  
New York, New York 10011

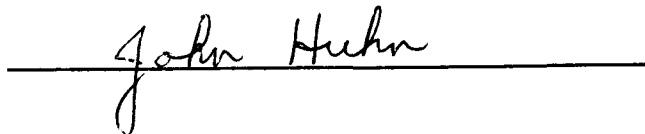
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

13th day of December , 1977.





STATE OF NEW YORK  
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State of New York  
County of Albany

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~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13th day of December , 1977, ~~she~~ served the within  
Notice of Determination by (~~certified~~) mail upon Edward Ehrenberg

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

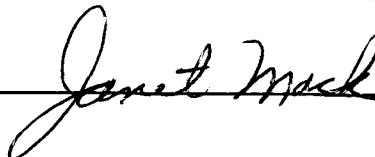
Edward Ehrenberg, CPA  
Laventhol, Krekstein, Horwath & Horwath  
919 Third Avenue  
New York, New York 10022

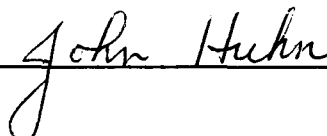
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of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of the) petitioner.

Sworn to before me this

13th day of December , 1977.







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

**December 13, 1977**

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

**Weil & Co., Inc.  
37-43 West 14th Street  
New York, New York 10011**

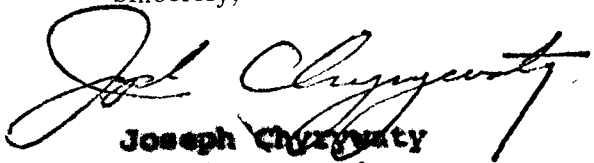
**Gentlemen:**

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,

  
**Joseph Chrygwy  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
WEIL & CO., INC.	:	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 Periods Ended August 31, 1972 and	:	
February 28, 1974.	:	

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Applicant, Weil & Co., Inc., 37-43 West 14 Street, New York, New York 10011, 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 periods ended August 31, 1972 and February 28, 1974 (File No. 10382).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 27, 1977 at 9:15 A.M. Applicant appeared by Edward Ehrenberg, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether applicant was entitled to a credit for sales taxes paid on sales which subsequently became uncollectible.

FINDINGS OF FACT

1. Applicant, Weil & Co., Inc., filed New York State and local sales and use tax returns for the periods ended August 31, 1972 through February 28, 1974.

2. Applicant was engaged in the retail sale of furniture and appliances. Much of the business during the period in question was transacted on an installment credit basis.

3. On March 13, 1973, the Sales Tax Bureau advised applicant that credit claims taken on its sales tax returns for the periods ended August 31, 1971 through May 31, 1972 had been allowed to the extent of \$104.28. In conjunction therewith, applicant remitted to the Sales Tax Bureau \$2,392.97, representing the disallowed portion of the credit claims and the minimum statutory interest.

4. Applicant's claim represented the uncollectible portions of installment accounts receivable, previously reported as sales. After reviewing the accounts written off by applicant the Sales Tax Bureau determined that if the purchaser made payments to the applicant totalling an amount equal to or greater than the sales tax due, no portion of the sales tax would be eligible for credit. If the partial payments were less than the sales tax due, only the difference between the amount actually received and the sales tax due would be eligible for credit.

5. On December 4, 1973, applicant filed two applications for credit or refund of state and local sales or use tax. One application was for the \$2,392.97 which applicant remitted with respect to the disallowed part of the credit claims for the periods ended August 31, 1971 through May 31, 1972. The other application (in the amount of \$7,349.79) represented the uncollectible portions of installment accounts receivable, previously reported as sales. These accounts were determined to be uncollectible during the period September 1, 1970 through August 31, 1973. (There appears to be a duplication in the applications for the periods ended August 31, 1971 through May 31, 1972).

6. In connection with the aforementioned applications, applicant took a credit for the amounts claimed to be due, plus interest on its sales tax return for the period ended February 28, 1974. The total credit claimed was \$11,204.03.

7. Applicant had previously taken a credit on its sales tax return for the period ended August 31, 1972 of \$657.34 on sales of \$9,390.52 which it classified as bad debts, returns and allowances.

8. The Sales Tax Bureau denied the credits taken on applicant's sales tax returns for the periods ended February 28, 1974 and August 31, 1972. On July 20, 1974, it issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for \$11,861.37, plus penalty and interest.

9. The Sales Tax Bureau contended that the first monies received by the seller on an account represented the sales tax and any allowance for a proportionate refund or credit on a partial bad debt did not apply to sales made prior to December 1, 1974.

10. The applicant contended that the amendment to the regulation (section 20 NYCRR 525.5), effective December 1, 1974, was merely a clarification of what the procedure should have been at all times.

#### CONCLUSIONS OF LAW

A. That under section 1132(e) of the Tax Law, the State Tax Commission may provide (by regulation) for (1) the exclusion of amounts representing sales from taxable receipts, where a receipt has been ascertained to be uncollectible or, (2) where the tax has been paid on such receipt, for a refund or credit of the tax so paid.

B. That by regulation promulgated January 31, 1967 and made retroactively effective to June 1, 1966 (former regulation section 20 NYCRR 525.5(a)), the Commission provided that where a receipt was ascertained to be uncollectible, the vendor, by complying with certain procedures, could exclude such receipt from his return or, where the tax has been paid and reported in a return, could apply for refund or credit for the tax paid. However, this regulation did not apply to partial bad debts where the amount collected on a particular sale exceeded the sales tax due.

C. That by a subsequent regulation promulgated November 18, 1974 and made effective December 1, 1974, the aforementioned regulation was amended to provide for a proportionate refund or credit in the event of a partial bad debt (20 NYCRR 525.5(c)). The amended regulation (which is currently in effect) applies to all sales made on or after December 1, 1974 and is not retroactive.

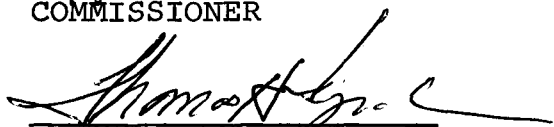
D. That the application of Weil & Co., Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 20, 1974 is sustained.

DATED: Albany, New York  
December 13, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER