

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THERMAX WIRE CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use Taxes :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ Period ~~(s)~~ Ended :  
August 31, 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 , 19 77, he served the within  
Notice of Determination by ~~XXXXXXXXXX~~ mail upon Thermax Wire Corp.

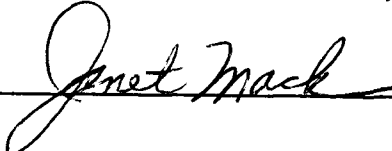
~~XXXXXXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Thermax Wire Corp.  
32-02 Linden Place  
Flushing, New York 11354

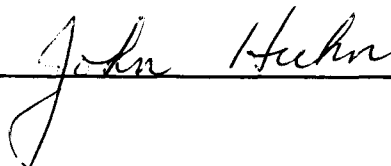
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

Sworn to before me this

13th day of December , 19 77.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THERMAX WIRE CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use Taxes :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ Period ~~(9)~~ Ended :  
August 31, 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 ~~Registered~~ mail upon Ramesh Sarva, CPA  
Kopelan, Gold & Company

(representative of) the petitioner in the within proceeding,

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

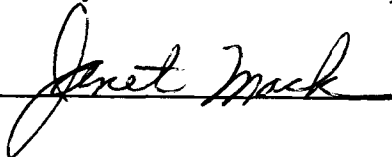
as follows: Ramesh Sarva, CPA  
Kopelan, Gold & Company  
555 Fifth Floor  
New York City, New York 10017

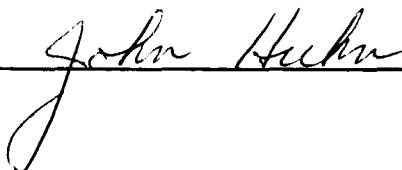
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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.

  
\_\_\_\_\_

  
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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

**Thermax Wire Corp.**  
**32-02 Linden Place**  
**Flushing, New York 11354**

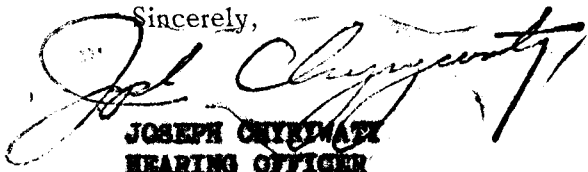
**Gentlemen:**

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 & 1250** 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 CHYNOWETH**  
**HEARING OFFICER**

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	:	
THERMAX WIRE CORP.	:	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 Ended August 31, 1974.	:	

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Applicant, Thermax Wire Corp., 32-02 Linden Place, Flushing, New York 11354, 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 ended August 31, 1974 (File No. 15945).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 28, 1977. Applicant appeared by Ramesh Sarva, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether applicant cancelled a purchase of equipment and parts and was, therefore, entitled to a refund of taxes paid on said purchase.

FINDINGS OF FACT

1. On February 28, 1974, applicant ordered certain production equipment from The Entwistle Company of Hudson, Massachusetts. Subsequent to said date, applicant ordered nominal additions to said equipment. The net price of said equipment and additions was \$79,994.50.

2. The nature complexity and electrical requirements of the production equipment demanded that it be assembled, tested and modified to meet the required specifications of applicant upon its installation at applicant's plant in Flushing, New York.

3. The production equipment was delivered to applicant's plant on June 21, 1974. The installation was not completed until December of 1974.

4. Applicant received invoices for the equipment from The Entwistle Company in August of 1974. The invoices did not include charges for sales tax and were not paid by applicant.

5. Upon receipt of the invoices, applicant's accounting staff recorded on its books the production equipment and the accrued sales tax due on the purchases in the amount of \$3,199.78. Applicant reported and paid the sales tax on its quarterly sales tax return filed for the period ended August 31, 1974.

6. In connection with the installation of the production equipment purchased from The Entwistle Company, applicant ordered miscellaneous installation parts from Conair, Inc. at a price of \$3,550.00

Applicant received invoices for these parts from Conair, Inc. in August of 1974. Sales tax was not included on the invoices.

7. Upon receipt of the invoices from Conair, Inc., applicant's accounting staff recorded the parts on its books, and accrued, reported and paid the tax due in the amount of \$142.00 in the same manner as for the production equipment received from The Entwistle Company. However, it was applicant's internal policy that the accounting staff could authorize payment for amounts less than \$5,000.00. Therefore, a check in the amount of \$3,550.00 was automatically submitted to Conair, Inc. as full payment of the invoices.

8. During the early part of August, 1974, applicant approached the Chemical Bank to make financial arrangements for the production equipment purchased from The Entwistle Company and the parts purchased from Conair, Inc.

9. As a result of applicant's discussions with the Chemical Bank, Chemlease Worldwide, Inc. (rather than applicant) purchased the production equipment from The Entwistle Company and the parts from Conair, Inc. and leased the same to applicant. Sales tax was charged by Chemlease Worldwide, Inc. on the monthly rental charges.

10. The Entwistle Company submitted an invoice to Chemlease Worldwide, Inc. in the amount of \$79,990.50 for the production equipment. Chemlease Worldwide, Inc. made payment to The Entwistle Company for the total amount of the invoices.

11. Although there is no evidence to indicate that Chemlease Worldwide, Inc. was invoiced by Conair, Inc. for the installation parts, Chemlease, Inc. submitted payment of \$3,550.00 to Conair, Inc. Applicant's payment of \$3,550.00 (which was submitted in full payment of the parts) was refunded to the applicant by Conair, Inc.

12. On June 19, 1975, applicant submitted an application for refund of tax in the amount of \$3,341.78, which represented the tax it had paid on the production equipment and the installation parts involved herein. It did so upon the grounds that it had cancelled the purchases.

13. On August 22, 1975, the Sales Tax Bureau informed the applicant that its claim for refund in the amount of \$3,341.78 was denied in full, upon the grounds that it appeared that two taxable transactions were made, namely, the original purchase of the production equipment and installation parts which were later disposed of, and the rental from Chemlease Worldwide, Inc.

#### CONCLUSIONS OF LAW

A. That the facts clearly indicate that the production equipment and installation parts were purchased by applicant from The Entwistle Company and Conair, Inc., respectively. However, due to applicant's financial arrangements with Chemlease Worldwide, Inc., the original purchase had to be cancelled.

B. That the original sales of production equipment and installation parts to applicant by The Entwistle Company and Conair, Inc., respectively, were cancelled.

C. That the application of Thermax Wire Corp. is granted.

DATED: Albany, New York  
December 13, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER