

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STEIN WOODCRAFT CORP.

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 ~~Year(s) or~~ Period(s) :  
December 1, 1970 through May 31, 1975

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 13 day of December , 19 77, she served the within  
Notice of Determination by (~~certified~~) mail upon Stein Woodcraft  
Corp.

(~~representative of~~) the petitioner in the within proceeding,

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

as follows: Stein Woodcraft Corp.  
22 Sprague Avenue  
Amityville, New York 11701

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

13 day of December , 1977.

Just Mack

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STEIN WOODCRAFT CORP.

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)~~ :  
December 1, 1970 through May 31, 1975

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 13 day of December, 1977, she served the within  
Notice of Determination by ~~(XXXXXX)~~ mail upon Philip F. Harling,  
Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Philip F. Harling, Esq.  
95 Braham Avenue  
Amityville, New York 11701

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

13 day of December, 19 77

Janet Mack

John Huhn



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

**Stein Woodcraft Corp.**  
**22 Sprague Avenue**  
**Amityville, New York 11701**

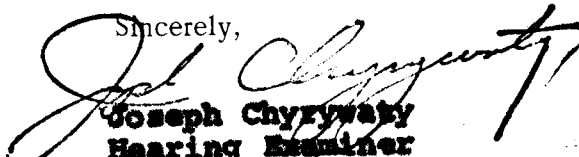
**Gentlemen:**

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 Chyrywat**  
**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	:	
STEIN WOODCRAFT 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 December 1, 1970 through	:	
May 31, 1975.	:	

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Applicant, Stein Woodcraft Corp., 22 Sprague Avenue, Amityville, New York 11701, 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 December 1, 1970 through May 31, 1975 (File No. 15013).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 25, 1977 at 9:15 A.M. Applicant appeared by Philip F. Harling, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

#### ISSUE

Whether the sale of concession stands and counters by the applicant to movie theater operators constituted sales of tangible personal property or capital improvements to real property.

FINDINGS OF FACT

1. On February 17, 1976, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Stein Woodcraft Corp., for the period December 1, 1970 through May 31, 1975. The Notice was issued in accordance with the findings of an audit performed by the Sales Tax Bureau upon the applicant's books and records. On audit, the Sales Tax Bureau determined that sales of concession stands by the applicant to United Artists Theatres and its subsidiaries were sales of tangible personal property, the receipts from which were subject to sales tax.

2. During the period at issue, applicant designed, manufactured and sold movie theater concession equipment consisting of concession counters and backbars. Applicant made numerous sales of said concession equipment to United Artists Theaters and its subsidiaries. Applicant did not collect sales tax on these transactions, but rather deemed these sales to be capital improvements to real property. The method in which the applicant consummated these sales was to first have a scale drawing made of the proposed counter and backbar, drawn to meet the architect's specifications. The counter and backbar sections were constructed in the applicant's shop and delivered to the contracting theater. The completed counters and backbars consisted of from three to five sections and were usually equipped with sinks, water taps, ice cream coolers and popcorn machines. This equipment required plumbing and electrical facilities. Upon delivery to the theater, applicant was responsible for setting the counters in place and joining the sections together. However, in some areas, union carpenters were required to do this work. In cases where the services of a carpenter were required, the theater owner reimbursed the carpenters. The

counters were not anchored to the realty, but rather rested on the floor. The weight of the completed counter provided for its stability. The backbar area was usually bolted to an existing wall. Applicant did not make the necessary electrical or plumbing connections.

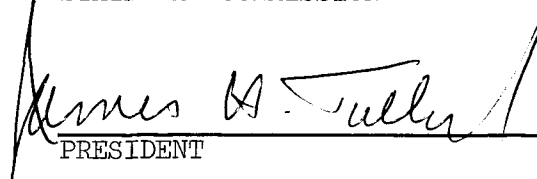
CONCLUSIONS OF LAW

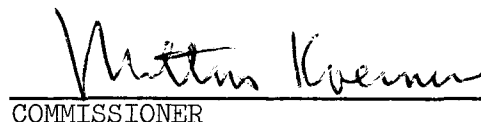
A. That the sale and installation of counters and backbars by applicant did not constitute an addition or capital improvement to real property according to the meaning and intent of section 1105(c)(3) of the Tax Law. Therefore, the sales of the counters and backbars were subject to sales tax.

B. That the application of Stein Woodcraft Corp. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 17, 1976 is sustained.

DATED: Albany, New York  
December 13, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER