

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MOHAWK FINISHING PRODUCTS, INC. AND
ROBERT BETHEL, Individually and as Officer
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, 1968 through May 1972

AFFIDAVIT OF MAILING

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

Mohawk Finishing Products, Inc.

Notice of Determination by ~~(CERTIFIED)~~ mail upon Robert Bethel &
and as Officer, Individually

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

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

Mohawk Finishing Products, Inc. &

as follows: Robert Bethel, Individually
and as Officer

RD #4, Perth Road

Amsterdam, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a

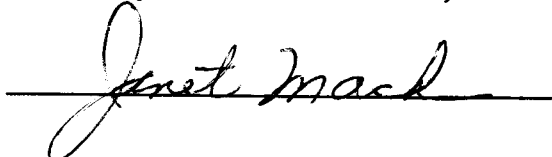
(post office or official depository) under the exclusive care and custody of

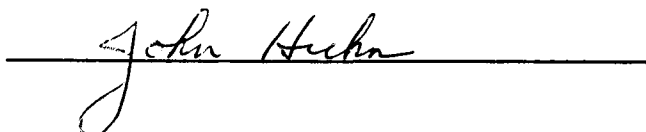
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~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

In the Matter of the Application	:	
of	:	
MOHAWK FINISHING PRODUCTS, INC. AND	:	
ROBERT BETHEL, Individually and as Officer	:	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, 1968 through	:	
May 31, 1972.	:	

Applicants, Mohawk Finishing Products, Inc. and Robert Bethel, individually and as officer, RD #4, Perth Road, Amsterdam, New York, 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, 1968 through May 31, 1972 (File No. 01483).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on June 21, 1976 at 2:45 P.M. Applicant Robert Bethel appeared pro se and on behalf of Mohawk Finishing Products, Inc. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether cartons, bottles, bottle caps and labels, which are contained, used to identify and are transferred with applicant's products, are subject to a sales or use tax.

FINDINGS OF FACT

1. Applicant Mohawk Finishing Products, Inc. filed New York state and local sales and use tax returns for the period December 1, 1968 through May 31, 1972.

2. On December 8, 1972, as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Mohawk Finishing Products, Inc. and Robert Bethel, individually and as officer (under Notice Number 90,749,683) in the sum of \$2,635.34, plus penalty and interest. The assessment consisted of additional tax due on the sale of outer shipping cartons, bottles, bottle caps and labels.

3. Applicant Mohawk Finishing Products, Inc. is engaged in the manufacture, sale and distribution of furniture-finishing products. Being in liquid form, these finishers, are bottled, capped and then packed in cardboard containers for shipment. The customers to whom said applicant makes its sales are engaged principally in the business of manufacturing, repairing or restoring furniture. The Sales Tax Bureau determined that the sale of cartons, bottles, caps and labels which are contained, used to identify and are transferred with the product to these customers, were taxable sales. The determination was made on the grounds that the resale certificates received by said applicant did not specifically cover shipping and packaging supplies.

4. In its invoices, applicant Mohawk Finishing Products, Inc. did not state any charge for the cartons, bottles, bottle caps or labels separately from the charge stated for the finishing products.

5. Applicant Mohawk Finishing Products, Inc. issued resale certificates to its suppliers for packaging and shipping material purchases. Said applicant paid a tax on some packaging material purchases during 1969 and 1970, but was given credit for the tax paid on these items at the time of the audit.

6. Applicant Mohawk Finishing Products, Inc. obtained properly completed resale certificates from many of its customers, which it accepted in good faith. In the instances where it had such a certificate, no sales tax was charged by it on any portion of the sale. When no certificate was on file, said applicant properly charged the sales tax.

7. The applicants contended that the resale certificates covered the entire purchase and that the purchaser is liable for any tax which is due. Said resale certificates did not specifically state that the tangible personal property which was covered included the cartons, bottles, bottle caps or labels.

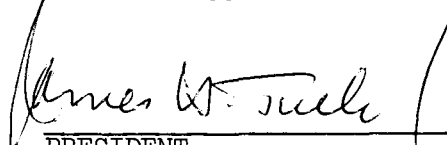
CONCLUSIONS OF LAW

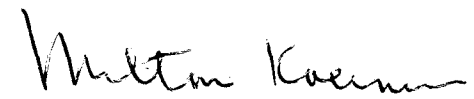
A. That the sale of outer shipping cartons, bottles, bottle caps and labels, made during the period December 1, 1968 through May 31, 1972 by applicant Mohawk Finishing Products, Inc. to its customers, constituted a retail sale of such items to said customers within the meaning and intent of section 1101(b)(4) of the Tax Law, since the customers did not resell these items with the contents therein, (Colgate-Palmolive-Peet Company v. Joseph, 308 NY 333 (1955)).

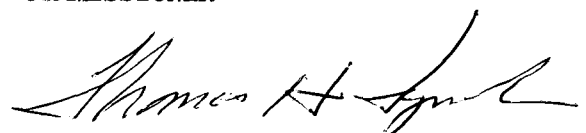
B. That the application of Mohawk Finishing Products, Inc. and Robert Bethel, individually and as officer, is denied.

DATED: Albany, New York
December 13, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER