

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CONTRACTORS SALES 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(~~X~~) :  
Ending May 31, 1974.

State of New York  
County of Albany

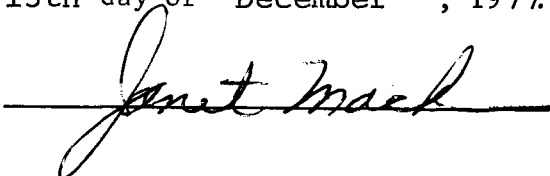
John Huhn , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13th day of December , 1977, ~~he~~ served the within  
Notice of Determination by (~~certified~~) mail upon Contractors Sales Co.,  
Inc. (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Contractors Sales Co., Inc.  
Karner Road  
Albany, New York 12205

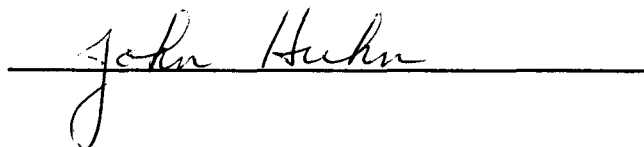
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

Sworn to before me this

13th day of December , 1977.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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Notice of Determination by ~~(certified)~~ mail upon Daniel Ertel, CPA

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as follows:

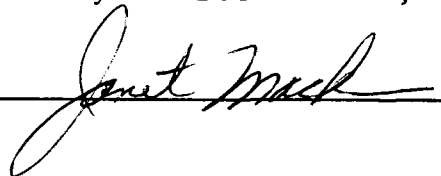
Daniel Ertel, CPA  
263 State Street, Box 1081  
Schenectady, New York 12301

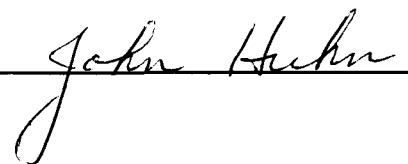
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of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of the) petitioner.

Sworn to before me this

13th day of December, 1977.

  
\_\_\_\_\_

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

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

**December 13, 1977**

**Contractors Sales Co., Inc.**  
**Karner Road**  
**Albany, New York 12205**

**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 :  
CONTRACTORS SALES CO., INC. :  
for Revision of a Determination or for : DETERMINATION  
Refund of Sales and Use Taxes under :  
Articles 28 and 29 of the Tax Law for :  
the Period Ending May 31, 1974. :  
:

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Applicant, Contractors Sales Co., Inc., Karner Road, Albany, New York 12205, 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 ending May 31, 1974 (File No. 11123).

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 August 16, 1977 at 9:15 A.M. Applicant appeared by Daniel Ertel, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether applicant, Contractors Sales Co., Inc., is entitled to a credit for sales tax paid on the balance of a debt ascertained to be uncollectible.

FINDINGS OF FACT

1. On December 20, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Contractors Sales Co., Inc., in the amount of \$1,697.03, plus penalty and interest. This amount was based on a credit which applicant claimed on his New York State sales tax return for the period ending May 31, 1974.

2. On June 16, 1971, applicant sold equipment to one of its customers for \$51,580.00, plus applicable sales tax of \$3,629.50. This amount was properly remitted. Sometime in January of 1974, the customer defaulted on his payments and the equipment was repossessed in the amount of \$25,940.32, which was the balance due at that time. Applicant determined that of the balance due, a sum of \$24,243.29 was the actual cost of the equipment and \$1,697.03 (the amount in question) was uncollected sales tax. Applicant then resold the equipment at a price greater than the repossessed balance due and collected sales tax on the total selling price.

3. On the sales tax return for the period ending May 31, 1974, the applicant reported the second sale of the equipment as a taxable sale and claimed a credit for the sales tax calculated to be uncollected from the first transaction.

4. The Sales Tax Bureau denied the credit on the grounds that payments received on the first sale of the equipment were in excess of the sales tax due.

5. Applicant contended that credit should not be denied in this case solely on the grounds that Regulation 20 NYCRR 525.5(c) went into effect on December 1, 1974. It was argued by applicant that prior to the promulgation of the above-mentioned regulation, there was no written policy of the Sales Tax Bureau with reference to the treatment of bad debts and, therefore, the new regulation should be applied retroactively.

#### CONCLUSIONS OF LAW

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

B. That prior to December 1, 1974, the applicable regulation was the former 20 NYCRR 525.5(a), promulgated on January 31, 1967 and retroactively effective to June 1, 1966. It provided that where a receipt was uncollectible, the vendor, after complying with certain procedures, could exclude such receipt from his return or where the tax was previously paid and reported in a return, he could apply for refund of or credit for the tax paid. This regulation, however, did not allow refunds of or credits for partial bad debts, where the amount collected on a particular sale exceeded the sales tax due.

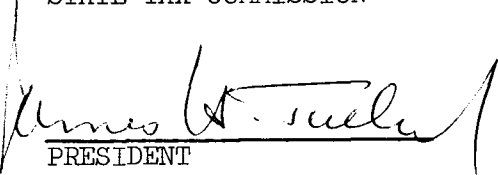
C. That by a subsequent regulation promulgated November 18, 1974 and effective December 1, 1974, the bad debt provisions of the aforementioned regulation were amended and superceded by 20 NYCRR 525.5(c) which provided for a proportionate refund or credit in the event of a partial bad debt. This new regulation applies to all sales on or after December 1, 1974 and was not intended to be retroactive.

D. That since the applicant received payments for the equipment sold in the first transaction in excess of the sales tax due from the sale, and the balance due was ascertained to be uncollectible, the first monies received on such sale are to be applied to sales tax and no credit for partial bad debts is allowed, in accordance with section 1132(e) of the Tax Law and 20 NYCRR 525.5(a).

E. The application of Contractors Sales Co., Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1974 is sustained.

DATED: Albany, New York  
December 13, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER