

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CENTURY METALCRAFT CORPORATION

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 and 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
September 1, 1972 through May 31, 1975.

State of New York
County of Albany

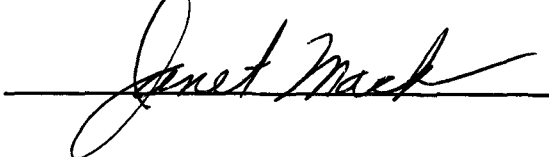
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978, ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Century Metalcraft
Corporation ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Century Metalcraft Corporation
2265 Westwood Boulevard
Los Angeles, California 90064

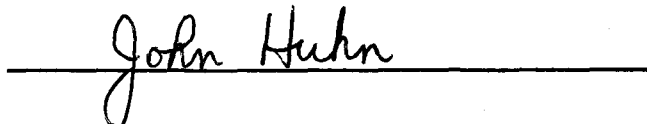
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

14th day of February , 1978





CONFIDENTIAL - SECURITY INFORMATION

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STATE OF NEW YORK
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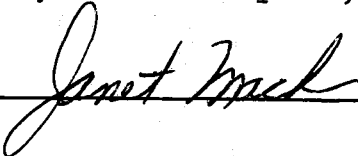
State of New York
County of Albany

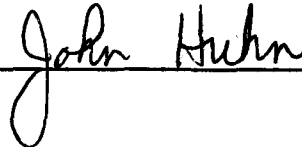
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 19 78, ~~he~~ served the within
Notice of Determination by ~~registered~~ mail upon Ruurd Leegstra
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Ruurd Leegstra, CPA
Coopers & Lybrand
1251 Avenue of the Americas
New York, New York 10020
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

14th day of February , 19 78







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

February 14, 1978

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

**Century Metalcraft Corporation
2265 Westwood Boulevard
Los Angeles, California 90064**

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,

**Aloysius J. Mendez
Assistant Director**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CENTURY METALCRAFT CORPORATION	:	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 September 1, 1972 through	:	
May 31, 1975.	:	

Applicant, Century Metalcraft Corporation, 2265 Westwood Boulevard, Los Angeles, California 90064, 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 September 1, 1972 through May 31, 1975 (File No. 10684).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 22, 1977 at 9:15 A.M. Applicant appeared by Ruurd Leegstra, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether credits taken by the applicant for sales taxes paid on sales to customers, whose accounts were subsequently found to be uncollectible, were properly disallowed by the Sales Tax Bureau.

FINDINGS OF FACT

1. On October 8, 1975, 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 the applicant for \$31,523.44, plus penalty and interest.

2. The applicant timely applied for a hearing to review said determination.

3. During the period at issue, applicant's business consisted of selling sets of pots and pans by showing them in a customer's home. The sale of a set amounted to \$360.00 and a down payment of \$62.00 was always collected. Most of applicant's sales were made in New York City.

4. On audit, the Sales Tax Bureau disallowed credits taken by applicant for sales taxes paid on sales to customers whose accounts were ascertained to be uncollectible. In some instances, the applicant repossessed the merchandise. However, no refund was made to the customer. In all instances, the applicant had collected sufficient monies on the outstanding amount to cover the sales tax due. The sales at issue were made prior to December 1, 1974:

5. In disallowing the credits, the sales tax auditor did not calculate the sales tax due on uncollectible accounts on a pro-rata basis. Instead, the sales tax was calculated on the full purchase price. The auditor treated any payments that the applicant received as applicable, first, to the entire amount of the sales tax on the total sales price and, second, as payment for the item.

6. The deficiency also included a tax of \$960.41 attributable to the purchase of items called "door openers", utilized by applicant's sales personnel to gain entrance to a home. Said amount is not at issue here.

7. For the audit period, the applicant paid sales taxes based upon estimated sales. It was conceded by the Sales Tax Bureau that the applicant overestimated sales during the audit period by \$13,757.05 and, therefore, is entitled to a credit of \$1,053.78.

8. The applicant at all times acted in good faith.

CONCLUSIONS OF LAW

A. That section 1132(a) of the Tax Law requires the vendor to collect sales tax when collecting the purchase price. During the period under review, the Sales Tax Bureau assumed that the first monies received by a vendor were for the entire sales tax due on the sale. Section 1132(d) of the Tax Law explicitly provided that a different rule could be adopted only by a regulation of the Tax Commission.

B. That under 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.

C. That by regulation promulgated January 31, 1967 and made retroactively effective to June 1, 1977, 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 had been paid and reported in a return, could apply for refund of or credit for the tax paid. This regulation, however, did not apply to partial bad debts where the amount collected on a particular sale exceeded the sales tax due.

D. That by a subsequent regulation promulgated November 18, 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 or uses made on or after December 1, 1974 and is not retroactive.

E. That since the applicant collected an amount exceeding the sales tax due on the sales at issue, he must apply the first monies received on each sale to the sales tax, and no credit for partial bad debts may be allowed.

F. That the application of Century Metalcraft Corporation is granted to the extent of cancelling the penalty and interest, in excess of the minimum interest; that the credit of \$1,053.78 as indicated in Finding of Fact "7" is allowed, together with such interest as may be lawfully owing; that the Sales Tax Bureau is hereby

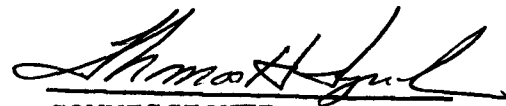
directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 8, 1975; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York
February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER