

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARCEL WEISS & SONS, INC.

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) :
June 1, 1971 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 24th day of April , 1978 , she served the within
Notice of Determination by ~~XXXXXX~~ mail upon Marcel Weiss & Sons, Inc.

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Marcel Weiss & Sons, Inc.
720 Milton Road
Rye, NY 10580

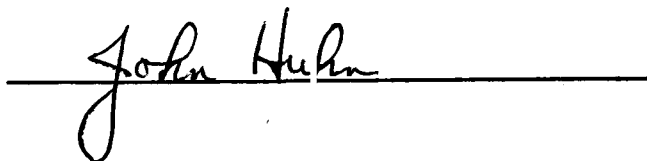
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative~~
~~XXXXXX~~ 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

24th day of April , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

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MARCEL WEISS & SONS, INC.

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For a Redetermination of a Deficiency or :
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Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year(s) or Period(s) :
June 1, 1971 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 24th day of April, 1978, she served the within
Notice of Determination by ~~XXXXXX~~ mail upon Edward Lescowicz, CPA

(representative of) the petitioner in the within proceeding,

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

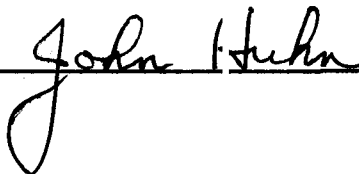
as follows: Edward Lescowicz, CPA
Lescowicz Brower & Driver
274 Madison Avenue
New York, NY 10016

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

24th day of April, 1978.





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

April 24, 1978

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

Marcel Weiss & Sons, Inc.
720 Milton Road
Rye, New York 10580

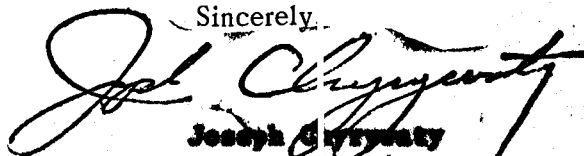
Gentlemen:

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 J. Chrymasty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MARCEL WEISS & SONS, INC.	:	
	:	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	:	
June 1, 1971 through May 31, 1975.	:	

Applicant, Marcel Weiss & Sons, Inc., 720 Milton Road, Rye, New York 10580, 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 June 1, 1971 through May 31, 1975 (File No. 15037).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 13, 1977 at 9:15 A.M. Applicant appeared by Edward A. Leskowicz, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwardron, Esq., of counsel).

ISSUE

Whether various purchases made by applicant were subject to sales and use tax.

FINDINGS OF FACT

1. Applicant, Marcel Weiss & Sons, Inc., filed New York state and local sales and use tax returns for the period June 1, 1971 through May 31, 1975.

2. During the period at issue, applicant was a general contractor.

3. On May 21, 1976 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 applicant for \$4,288.93 in tax, plus penalty and interest, for the period June 1, 1971 through May 31, 1975.

4. Applicant's general ledger, cash disbursements and purchase invoices were examined by an auditor of the Sales Tax Bureau. The auditor tested expense purchases totaling \$235,344.32 for the period June 1, 1974 through August 31, 1974 and determined that \$12,821.83 of said amount constituted taxable purchases, on which no tax had been paid. This represented a margin of error of 5.448%. The auditor applied this margin of error to applicant's total expense purchases of \$1,574,497.84 for the period June 1, 1971 through May 31, 1974, in order to determine additional purchases subject to use tax, as well as the additional use tax due.

5. The applicant presented documentary evidence substantiating the fact the \$6,849.71 of the \$12,821.83 in purchases found taxable during the test period were actually capital improvements and were, therefore, not subject to tax.

6. Applicant at all times acted in good faith.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau's determination of additional use taxes due was, in part, erroneous; that the margin of error applicable to applicant's expense purchases for the period June 1, 1971 through May 31, 1975 is hereby reduced to 2.54%, based on Finding of Fact "5"; therefore, the additional tax due is reduced to \$1,999.61.

B. That the penalties and interest in excess of the minimum statutory rate are cancelled.

C. That the application of Marcel Weiss & Sons, Inc. is granted to the extent indicated in Conclusions of Law "A" and "B," above; 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 May 21, 1976, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER