

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HUNTER MANUFACTURING CORPORATION  
and

SOL TEPPER

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~~) :  
November, 1970.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

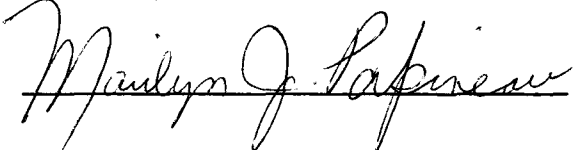
John Huhn , being duly sworn, deposes and says that .  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 15th day of March , 19 79, she served the within  
Notice of Determination by (~~certified~~) mail upon Hunter Manufacturing  
Corporation (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Hunter Manufacturing Corporation  
12-04 31st Avenue  
Long Island City, New York

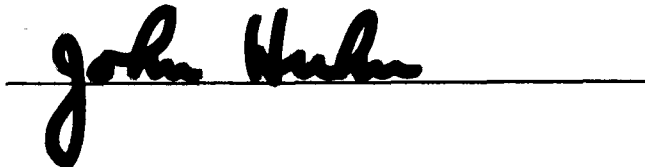
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

15th day of March , 1979.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HUNTER MANUFACTURING CORPORATION  
and  
SOL TEPPER

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) :  
November, 1970.

State of New York  
County of Albany

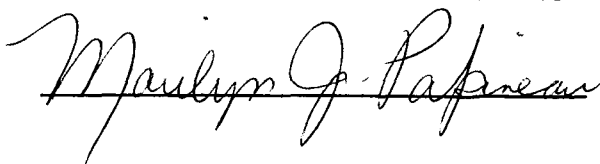
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 15th day of March , 19 79, she served the within  
Notice of Determination by (~~certified~~) mail upon Sol Tepper  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Sol Tepper  
11 Stonewell Road  
Rockville Centre, 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 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

15th day of March , 1979.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
HUNTER MANUFACTURING CORPORATION  
and  
SOL TEPPER

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) :  
November, 1970.

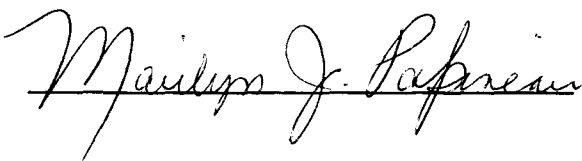
State of New York  
County of Albany

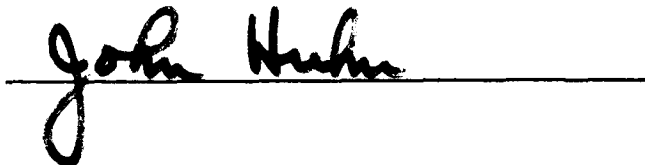
John Huhn, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 15th day of March, 1979, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Marvin Furst  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Marvin Furst, CPA  
Robert Mirskey & Co.  
475 Park Avenue South  
New York, New York 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

15th day of March, 1979.

  
Marilyn J. Papareau

  
John Huhn



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

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

March 15, 1979

**Hunter Manufacturing Corporation  
12-04 31st Avenue  
Long Island City, New York**

**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 and 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,

**MICHAEL ALEXANDER  
SUPERVISING TAX HEARING OFFICER**

cc: Petitioner's Representative

Taxing Bureau's Representative



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

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

March 15, 1979

Mr. Sol Tepper  
11 Stonewell Road  
Rockville Centre, New York


Dear Mr. Tepper:

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 and 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,

  
**MICHAEL ALEXANDER**  
**SUPERVISING TAX HEARING OFFICER**

cc: ~~Petitioner's Representative~~  
Taxing Bureau's Representative

## STATE TAX COMMISSION

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 November, 1970.

Applicants, Hunter Manufacturing Corporation, 12-04 31st Avenue, Long Island City, New York, and Sol Tepper, 11 Stonewell Road, Rockville Centre, New York, filed applications 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 November, 1970 (File Nos. 13846 and 13847).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 27, 1977 at 1:15 P.M. Applicant Hunter Manufacturing Corporation appeared by Marvin Furst, CPA. Applicant Sol Tepper appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the exchange of certain corporate assets for stock in the corporation constituted a "bulk sale" within the meaning and intent of section 1141(c) of the Tax Law.

II. Whether the aforementioned transaction constituted a retail sale and, therefore, was subject to sales tax.

III. Whether a portion of the property assessed for sales tax was "equipment" located outside New York State at the time of the transfer and, therefore, exempt from the sales tax.

FINDINGS OF FACT

1. On July 15, 1975 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant Hunter Manufacturing Corporation for taxes due of \$3,007.33, plus penalty and interest, for the period November, 1970. Also on July 15, 1975, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against applicant Sol Tepper for taxes due of \$3,007.33, plus penalty and interest, for the period November, 1970.

2. Applicants both wrote letters challenging the assessments, which letters were timely filed and taken in lieu of formal applications for redetermination of sales tax allegedly due.

3. Applicant Hunter Manufacturing Corporation was in the manufacturing business and had offices and factories in Canada, but also had a factory in New York City. Hunter Container Corporation was a subsidiary of the corporate applicant. Applicant Sol Tepper was a principal of the business who held stock in applicant Hunter Manufacturing Corporation.

4. As a result of purported internal disputes and conflicts between applicant Sol Tepper and other principals, an agreement was entered into and a transaction consummated whereby applicant Sol Tepper transferred his stock in Hunter Manufacturing Corporation, in exchange for which Hunter Manufacturing Corporation transferred assets of its subsidiary, Hunter Container Corporation, to Sol Tepper. These assets consisted of manufacturing equipment (including machinery and molds), as well as one company car.

5. Applicant Sol Tepper submitted no documentary evidence of the assets located in Canada at the time of this transaction, in order to support his testimonial evidence that the "molds" purportedly transferred were outside New York State at that time. The Sales Tax Bureau based its assessment of these molds as being taxable on an on-site inspection of applicant Sol Tepper's factory in New York City, as well as on admissions by applicant.

#### CONCLUSIONS OF LAW

A. That section 1101(b)(5) of the Tax Law defines sale, selling or purchase to be "Any transfer of title or possession or both, exchange or barter...for a consideration, or any agreement therefor...."

B. That section 1101(b)(4)(i) defines retail sale to be "A sale of tangible personal property to any person for any purpose...."

C. That the criteria of whether a transaction is subject to the provisions of section 1141(c) are that there be a sale, transfer or assignment in bulk of any part or the whole of one's business assets



by a person required to collect tax, and that such transaction be other than in the ordinary course of business.

D. That the transaction whereby applicant Sol Tepper transferred his stock in Hunter Manufacturing Corporation, in exchange for which Hunter Manufacturing Corporation transferred assets of its subsidiary, constitutes a sale within the meaning and intent of section 1101(b)(5) of the Tax Law and, more specifically, a retail sale as defined in section 1101(b)(4)(i).

E. That the above transaction constitutes a "bulk sale" within the meaning and intent of section 1141(c) of the Tax Law, as described in Conclusion of Law "C", above.

F. That the fact that this transaction was the result of the principals' desire to disassociate from each other in the business does not render the transaction exempt as a transfer of tangible personal property to a corporation solely in consideration for the issuance of stock in merger or consolidation, or the distribution of property by a corporation to its stockholders as a liquidating dividend, within the meaning of section 1101(b)(4)(ii) of the Tax Law. No merger or consolidation took place and a sale of assets to one stockholder in exchange for stock cannot mean a "liquidating dividend", within the meaning and intent of said section.

G. That applicants failed to carry their burden of proof to show by competent evidence that the portion of the transferred assets constituting "molds" was not properly taxed as being located in New York City at the time of the transfer.

H. That the applications of Hunter Manufacturing Corporation and Sol Tepper are denied and the notices issued July 15, 1975 are sustained.

DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER