

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Collectors Guild, Ltd. (Purchaser) :
(A Delaware Corp.) : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 12/1/73-2/28/77. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of May, 1980, he served the within notice of Determination by mail upon Collectors Guild, Ltd. (Purchaser), (A Delaware Corp.), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

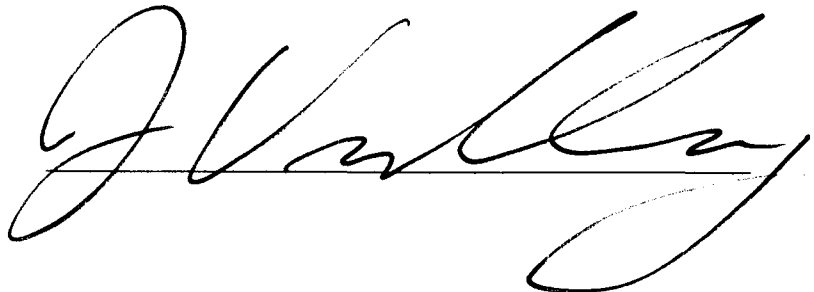
Collectors Guild, Ltd. (Purchaser)
(A Delaware Corp.)
185 Madison Ave.
New York, NY 10016

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

Sworn to before me this
16th day of May, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Collectors Guild, Ltd. (Purchaser) :
(A Delaware Corp.) : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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for the Period 12/1/73-2/28/77. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of May, 1980, he served the within notice of Determination by mail upon Charles B. Chernofsky the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Charles B. Chernofsky
Weiss, Rothfarb & Chernofsky
6 E. 43rd St.
New York, NY

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
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Collectors Guild, Ltd. (Purchaser)
(A Delaware Corp.)
185 Madison Ave.
New York, NY 10016

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Charles B. Chernofsky
Weiss, Rothfarb & Chernofsky
6 E. 43rd St.
New York, NY
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
COLLECTORS GUILD, LTD.	:	DETERMINATION
(Purchaser)	:	
(A DELAWARE CORP.)	:	
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, 1973 through February 28, 1977.	:	

Applicant, Collectors Guild, Ltd. (Purchaser) (A Delaware Corporation), 185 Madison Avenue, New York, New York 10016, 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, 1973 through February 28, 1977 (File No. 21568).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1979, at 1:15 P.M. Applicant appeared by Charles B. Chernofsky, Esq. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the applicant was liable for the sales taxes due from Collectors Guild, Ltd. (a New York corporation) pursuant to the bulk sale provisions of section 1141(c) of the Tax Law.

FINDINGS OF FACT

1. On June 22, 1977, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against Collectors Guild, Ltd. (a New York corporation) for the period December 1, 1973 through February 28, 1977, for

\$3,194.05 tax plus penalties and interest. The Notice was issued as a result of a field audit, of which the findings were agreed to but the tax was not paid. The Notice was issued pursuant to a consent to fixing of tax not previously determined and assessed. On February 15, 1977 Collectors Guild, Ltd. executed a consent extending the period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law to and including September 20, 1977.

2. On August 29, 1977, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against the applicant, Collectors Guild, Ltd. (Purchaser) (a Delaware corporation), for the period December 1, 1973 through February 28, 1977, for \$3,194.05 tax plus penalties and interest. The Notice was issued on the grounds that the applicant, Collectors Guild, Ltd. (Purchaser) (a Delaware corporation) was liable for the taxes due from Collectors Guild, Ltd. (a New York corporation) in accordance with the bulk sale provisions of section 1141(c) of the Tax Law.

3. On January 5, 1977, the Federal Deposit Insurance Corporation (FDIC), as Receiver of American Bank and Trust Company (ABT), took possession of all of the assets of Collectors Guild, Ltd. (a New York corporation) under the terms of the security agreements between the New York corporation and American Bank and Trust Company.

4. American Bank and Trust Company held security agreements with Collectors Guild, Ltd. (a New York corporation) as follows: a General Security Agreement, a Loan and Security Agreement-Accounts, and a Loan and Security Agreement-Inventory. All the agreements were dated April 10, 1969. Under the terms of these agreements, American Bank and Trust Company held a security interest in certain inventory, promotional material, packing materials, shipping supplies, accounts receivable, office equipment, furniture, all contract rights, purchase orders, general intangibles, and the proprietary books and records of Collectors Guild, Ltd. (a New York corporation).

5. The Federal Deposit Insurance Corporation was appointed Receiver of American Bank and Trust Company on September 15, 1976. The Federal Deposit Insurance Corporation as Receiver of the property of American Bank and Trust Company, had the power to collect debts and liabilities owed to American Bank and Trust Company.

6. On January 9, 1977, Collectors Guild, Ltd. (a New York corporation) ceased doing business.

7. On January 10, 1977, Collectors Guild, Ltd. (a Delaware corporation) was formed.

8. On or around January 20, 1977 the Federal Deposit Insurance Corporation held an auction of the assets of Collectors Guild, Ltd. (a New York corporation). The applicant, Collectors Guild, Ltd. (a Delaware corporation), was the successful bidder.

9. The applicant contended that section 1141(c) is not applicable in this instance since the assets of the New York corporation were purchased from an intervening party and not from the New York corporation.

10. The transfer of the assets of the New York corporation to the Federal Deposit Insurance Corporation as Receiver of American Bank and Trust Company was not a bulk transfer subject to the provisions of Article 6 of the Uniform Commercial Code. Section 6-103 provides:

The following transfers are not subject to this Article:

(3) Transfers in settlement or realization of a lien or other security interests;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

CONCLUSIONS OF LAW

A. That the transfer of the assets of Collectors Guild, Ltd. (a New York corporation) to Federal Deposit Insurance Corporation as Receiver for American Bank and Trust Company was made pursuant to a valid security agreement. Accordingly, the repossession of assets under such agreement does not constitute a sale, transfer, or assignment in bulk within the meaning and intent of section 1141(c) of the Tax Law. Moreover, the sale of the assets from Federal Deposit Insurance Corporation to the applicant Collectors Guild, Ltd. (a Delaware corporation) does not constitute the sale, transfer or assignment in bulk pursuant to the provisions of section 1141(c) of the Tax Law.

B. That the application of Collectors Guild, Ltd. (a Delaware corporation) is granted; and that the Notice and Demand for Payment of Sales and Use Taxes Due issued August 29, 1977 is cancelled.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER