

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Ellenville Handle Works Inc. :

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 9/1/72-8/31/75. :

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 17th day of October, 1980, he served the within notice of Determination by mail upon Ellenville Handle Works Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

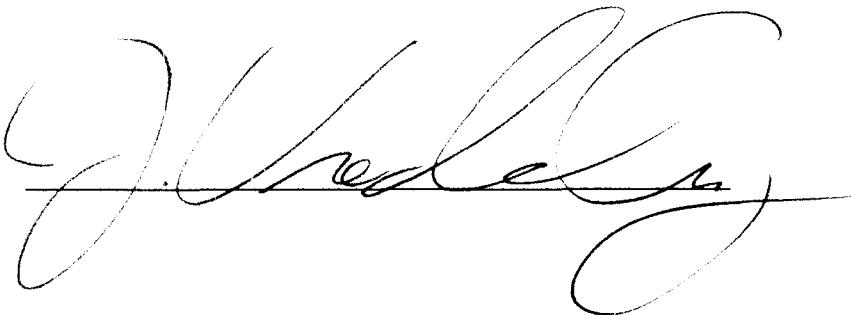
Ellenville Handle Works Inc.  
Creamery Rd.  
Ellenville, NY 12428

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  
17th day of October, 1980.

Deborah A Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

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Ellenville Handle Works Inc. :

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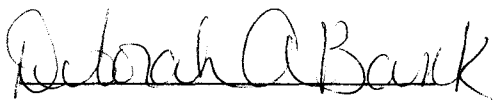
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Determination by mail upon Ronald S. Kossar the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

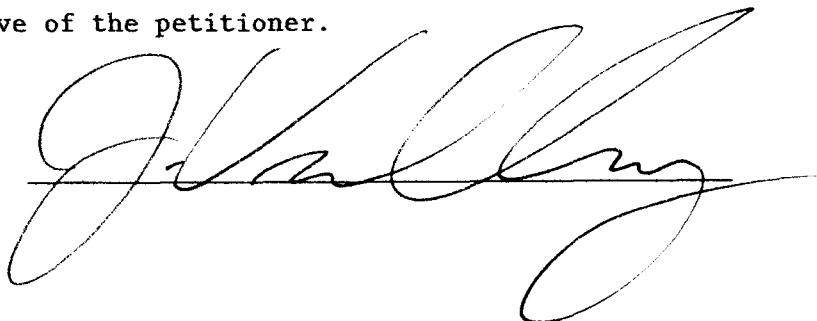
Mr. Ronald S. Kossar  
402 East Main St.  
Middletown, NY 10940

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  
17th day of October, 1980.





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

October 17, 1980

Ellenville Handle Works Inc.  
Creamery Rd.  
Ellenville, NY 12428

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  
Ronald S. Kossar  
402 East Main St.  
Middletown, NY 10940  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
ELLENVILLE HANDLE WORKS, 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 September 1, 1972 through	:	
August 31, 1975.	:	

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Applicant, Ellenville Handle Works, Inc., Creamery Road, Ellenville, New York 12428, 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 August 31, 1975 (File No. 15405).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 23, 1979 at 1:15 P.M. Applicant appeared by Ronald S. Kossar, Esq. The Audit Division appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUES

I. Whether solvents and thinners purchased by applicant for use in its manufacturing process are subject to the New York State Sales and Use Tax.

II. Whether proper allocation of electricity for non-production use was made by the Audit Division.

FINDINGS OF FACT

1. On April 5, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Ellenville Handle Works, Inc. for the period September 1, 1972 through August 31, 1975, in the amount of \$2,138.89 tax, plus penalties and interest.

2. Applicant executed a consent extending the period of limitation for assessment to December 20, 1976.

3. The Audit Division based its determination on a field audit of applicant's books and records. The Audit Division took the position that solvents and thinners did not become a physical component part of the product manufactured since the solvents and thinners evaporate. The solvents and thinners were held taxable at the statewide rate resulting in tax due of \$1,460.92. The Audit Division also determined that 31.51 percent of the electricity used by applicant was taxable. This percentage was determined by comparing the kilowatt hours used for lighting fixtures not attached to machinery and motors deemed non-productive to total kilowatt hours purchased. Motors used to operate applicant's exhaust system in the factory were included in the taxable percentage since sawdust and shavings collected through the exhaust system were used as fuel for heating the plant and not resold. Tax due on electricity was \$651.72. The remainder of the notice was for tax due on the purchase of assets, which is not at issue.

4. Applicant manufactures broom and paint brush handles. As part of the manufacturing process, paint is applied to the finished handle by a "slow dip" process. This process requires the dipping of handles into a tank of paint at a pre-determined viscosity and withdrawal at a speed comparable to the "skinning" of the paint. This process is used so that the paint does not flow back when the handles are turned upright. "Skinning" occurs as solvents evaporate. The viscosity of the paint is affected by temperature and is checked at least twice a day. Solvents are added to maintain the viscosity needed in the "slow dip" process.

While it was acknowledged that the solvents do evaporate, applicant contended that a degree of the solvents remain in the paint for over a year

and that they become a component part of a product produced for sale. The solvents also give more elasticity to the dried paint so that when a hole is drilled in the handle, the paint does not chip.

5. Thinners, which are slower drying solvents, are used to resalvage paint-blemished handles. Only 1 percent of the thinners purchased was used in the washing of handles and as a hand wash. The remaining 99 percent of the thinners is used for the same purpose as the solvents.

6. Applicant contended that electricity used in the following circumstances is exempt from tax under section 1115(c) of the Tax Law:

- (a) Electricity used in factory lighting -- Lighting is essential to production and at least one fluorescent light is needed over each machine in order to safely operate it.
- (b) Electricity used to power motors in the exhaust system -- The exhaust system consists of ducts attached to the production machinery for the purpose of collecting the by-products of sawdust and wood shavings in order for the production machinery to operate uninterrupted and efficiently.
- (c) A portion of electricity used to power motors in the central heating system also provides heat for the kiln -- The kiln evaporates moisture in the raw material lumber, so as to obtain the desired moisture content. Applicant, however, failed to introduce any evidence as to the portion of electricity applicable to this purpose.

7. Applicant acted in good faith.

#### CONCLUSIONS OF LAW

A. That a detectable amount of solvents and thinners used by applicant in its manufacturing process remains in the finished product; therefore, the solvents and 99 percent of the thinners purchased by applicant are not retail

sales as defined by section 1101(b)(4) of the Tax Law and qualify for exemption from the use tax under section 1118(4) of the Tax Law (Matter of Finch, Pruyn & Co., Inc. v. Tully, 69 A.D.2d 192, 419 N.Y.S.2d 232).

B. That electricity used for general lighting purposes is subject to tax under section 1105(b) of the Tax Law and does not qualify for the manufacturing exemption under section 1115(c) of the Tax Law (20 NYCRR 528.22(a)(2)).

C. That applicant's exhaust system is used directly and exclusively in production in that it operates harmoniously with exempt machinery which could not be operated without the system for any extended period; therefore, the electricity used to power the exhaust system is exempt within the meaning and intent of section 1115(c) of the Tax Law (Niagara Mohawk Power Corporation v. Wanamaker, 286 A.D. 446, 144 N.Y.S.2d 458).

D. That applicant failed to show what portion if any of the electricity was used to power motors that provide heat for use in the kiln, accordingly no adjustment is made for such use.

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

F. That the application of Ellenville Handle Works, Inc. is granted to the extent indicated in Conclusions of Law "A", "C" and "E" above. The Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 5, 1976; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER