

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
DIEMOLDING CORPORATION
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, 1978
through November 30, 1981.

DECISION

Petitioner, Diemolding Corporation, 125 Rasbach Street, Canastota, New York 13032, filed a petition 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, 1978 through November 30, 1981 (File No. 42428).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on April 1, 1986 at 1:15 P.M., with all briefs to be filed by July 31, 1986. Petitioner appeared by Elmer Shaw, CPA. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed certain nontaxable sales reported by petitioner.

II. Whether certain machinery or equipment purchased by petitioner is used directly and predominantly in the production of tangible personal property for sale.

III. Whether the Audit Division properly imposed tax upon certain recurring purchases made by petitioner.

FINDINGS OF FACT

1. Petitioner, Diemolding Corporation, is engaged in the manufacture of molded plastic products. Dietooling, a Division of Diemolding Corporation, is a machining operation which produces new molds, as well as modifies, revises, alters or repairs existing molds used in the manufacture of the plastic products. Diemolding Corporation filed consolidated New York State and local sales and use tax returns.

2. On November 30, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner for the period June 1, 1978 through November 30, 1981, assessing sales and use taxes due in the amount of \$37,684.26, plus interest. Validated consents had been executed on petitioner's behalf extending until December 20, 1982 the statute of limitations on assessment for the subject period.

3. The aforementioned total of \$37,684.26 may be broken down into three separate segments, as follows:

a) \$26,846.26; tax assessed on modifications, revisions, alterations or repairs to customers' molds reported as nontaxable sales by petitioner.

b) \$4,113.89; tax assessed on purchases of machinery and equipment allegedly used directly and predominantly in petitioner's manufacturing process, including transportation and installation charges.

c) \$6,724.11; tax assessed on certain recurring expense purchases made by petitioner.

4. The taxes determined on claimed exempt sales (Item 3-a) and on recurring purchases (Item 3-c) were obtained by projecting an error rate determined upon audit of a test period for each class of item. The use of test periods and

projections therefrom was consented to by petitioner. The tax determined upon machinery and equipment purchases (Item 3-b) was based upon a detailed audit of such purchases for the entire audit period.

5. The claimed exempt sales disallowed by the Audit Division under Item 3-a (supra) involve repairs, revisions, alterations or modifications to various molds used by petitioner in the production of molded plastic parts. These molds are owned by petitioner's customers and any given mold may only be used in a production run for that mold's particular owner. The molds were all used in production at petitioner's Virginia production facility. The repairs, revisions, etc. in question, necessary in order to ensure that the molds will produce parts according to required specification standards, were all performed in New York State, either at petitioner's machine shop or at other nearby machine shops, and the molds were transported back to Virginia by petitioner's trucks. There were no exemption certificates available with respect to any of these sales as audited. Petitioner's sales invoices for these repairs, modifications or revisions do not show separate charges for labor and materials. However, in one case (Invoice Number 005634), underlying documentation revealed that \$4,834.99 out of the full invoice amount of \$9,325.28 represented the manufacture of new parts for the customer.

6. During the period in question, petitioner incurred and capitalized on its books expenses for each of the following items having a useful life in excess of one year or, in the case of labor charges, which allegedly extends the useful life of a piece of equipment to greater than one year.

<u>Invoice No.</u>	<u>Workpaper Ref.</u>	<u>Amount</u>	<u>Description</u>
a) 8948	line 3	\$2,810.00	Digital Micrometers used for ongoing inspection of dimensional accuracy of molded plastic parts.
b) 3020	line 6	\$2,130.00	Labor charges to modify a grinding machine.
c) 05715	line 17	\$2,266.70	Hardness tester used to verify hardness of molding compound prior to its release into a production run.
d) 189357	line 18	\$1,015.35	Service charges, including travelling expenses for a service technician, for repairs to a Cordax measuring machine used to check dimensional accuracy of sample parts prior to a full production run.
e) 17093	line 33	\$ 709.38	Purchase of storage racks used to hold large molds between production runs.
f) 8589	line 34	\$1,700.00	Cost to rebuild a cross-slide rotary table used in tool shop to support and move steel being milled in the construction of new molds.
g) 843	line 22	\$4,409.00	Purchase of thermal writing analog recorder used to check temperatures and pressures on molds during production runs.
h) 2555	line 36	\$ 633.00	Purchase of digital linear recorder used to measure dimensions of production molds.

i) 181173	line 31	\$ 725.00	Purchase of blueprint reproduction machine to produce blueprints used in constructing new production molds.
j) 1701	line 32	\$ 105.35 ¹	Cost for service of installing electrical wiring for a lathe in the grinding department.
k) 19422	line 19	\$3,040.00	Purchase of a process control monitoring machine used to monitor temperatures and pressures of molding conditions during production runs.
l) C-8178	line 21	\$14,500.00	Labor charges to rebuild a press used in the molding process.

7. In addition to the foregoing items, petitioner seeks exemption from tax on the following service charges, paid to various contractors and capitalized on petitioner's books:

<u>Workpaper Ref.</u>	<u>Amount</u>	<u>Description</u>
a) line 7	\$ 475	Unload and install a walk-in oven used to bake and cure molded plastic parts.
b) line 8	\$ 700	Unload and install a new molding machine.
c) line 9	\$ 272	Unload and install a drip pan under the above molding machine (Item 8-b).
d) line 26	\$ 850	Rig and transport, but not install, a new molding machine.

¹ The Audit Division conceded that tax in the amount of \$5.96 is included in and was paid by petitioner on this item.

e) line 28	\$ 375	Skid and load, but not move or install, a centerless grinding machine onto petitioner's truck.
f) line 29	\$1,400	Deliver, unload and install a new molding machine (delivery portion of charge not separately stated).
g) line 42	\$ 366	Move a machine from one part of petitioner's plant to another part of the plant.
h) line 43	\$ 144	Same as above (Item 8-g).
i) line 1 (p. 2)	\$ 500	Unload and install a new molding machine.
j) line 2 (p. 2)	\$ 700	Same as above (Item 8-i).
k) line 24	\$2,025	Charge for crane used in installing a new molding machine.
l) line 2	\$2,150	Reroof a barn rented by petitioner and used to store packaging materials and molding compound.

8. Petitioner also seeks exemption for the following recurring purchase items taxable upon audit:

<u>Invoice No.</u>	<u>Workpaper Ref.</u>	<u>Amount</u>	<u>Description</u>
a) 2532501	line 12 (p. 4)	\$ 74.75 ²	Carbon inserts set into new molds.
b) 2917	line 27 (p. 5)	\$ 84.80	Cushion pads with a useful life in excess of one year

2 This amount was conceded at the hearing as not subject to tax by the Audit Division.

			used with hot stamping machine to soften impact of embossing action of machine.
c) 2306	line 25 (p. 5)	\$313.28	Spray lubricant used to prevent plastic parts from sticking to molds during production runs.
d) 6126	line 24 (p. 1)	\$196.26	Frosty Mat Sleeves; component part fitting inside a medical case produced by petitioner.
e) --	line 1 (p. 2)	\$885.60	Lubrication oil used in equipment used to make molds.
f) OISC-80-183	line 4 (p. 2)	\$240.00	Service performed on molding machine temperature control units.
g) --	line 14 (p. 2)	\$ 46.80	Steam shut off valve used on molding machine.
h) U80-03447	line 15 (p. 3)	\$204.46 ³	Adhesion test chemical used to verify that gaskets will adhere to molded parts.
i) --	line 16 (p. 3)	\$136.50	Service of recalibrating and resurfacing granite plates used in inspection of products as produced.
j) 2353	line 1 (p. 4)	\$113.68	Steel plates (raw material) ground and finished to specifications to become parts of new molds.
k) 79925	line 3 (p. 4)	\$ 7.22 ⁴	Screw extractor (no further description of item or use given).
l) 16708	line 6 (p. 4)	\$ 33.49	Socket head cap screws

3 This total includes a \$20.00 drum deposit conceded as nontaxable by the Audit Division.

4 The Audit Division has conceded the nontaxability of \$1.00 out of this amount.

			used to hold steel plates of a mold together.
m) 33-50003	line 16 (p. 4)	\$128.40	Same as above (Item 9-j).
n) 9393	line 11 (p. 5)	\$439.23	Power jacks and jaws used in producing molds.
o) 092810	line 8 (p. 6)	\$ 56.91	Surlyn; molding material used in test runs for products to determine the amount of distortion occurring at various product thicknesses.
p) 178109	line 9 (p. 6)	\$621.20 ⁵	Same as above (Item 9-e).

9. Finally, petitioner maintains that the Audit Division improperly asserts tax due on the purchase of two vehicles from Nye Ford, Inc., specifically a truck costing \$17,028.90 and a van costing \$9,332.90. Petitioner asserts the dealer (Nye Ford, Inc.) collected tax at the time of the purchase. However, no evidence was produced to show that tax was paid on either vehicle, nor was there evidence supplied which would otherwise support that either vehicle was properly exempt from tax.

CONCLUSIONS OF LAW

A. That the repairs, modifications, revisions or alterations to the molds in question constitute services subject to tax under Tax Law §§ 1105(c)(2) and 1105(c)(3) (Matter of Diemolding Corporation, State Tax Commn., January 9, 1981). Given that petitioner's invoices did not separately state or break down the labor and parts segments of particular jobs, except in one instance, the entire amounts charged for the services in question were properly subject to

⁵ This total includes \$80.00 as drum deposits conceded as non-taxable by the Audit Division.

tax. Accordingly, except for \$4,834.99 constituting new parts (see Finding of Fact "5"), the portion of the assessment relating to such services is sustained.

B. That Tax Law section 1105(c)(3) imposes tax upon the receipts from the sale of "[i]nstalling tangible personal property, or maintaining, servicing, repairing tangible personal property not held for sale in the regular course of business".

C. That, during the period in issue, section 1115(a)(12) of the Tax Law provided, in pertinent part⁶:

"§1115. Exemptions from sales and use taxes. --

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus." (Emphasis added.)

D. That 20 NYCRR 528.13(e)(3) provides as follows:

"(3)(1) The term supply means an item of tangible personal property used in the maintenance of machinery or equipment and an item of tangible personal property used or consumed in production, whose use is incidental to such production, or which is expendable.

(11) Supplies used in connection with machinery and equipment directly and predominantly used in the production of tangible personal property for sale are not exempt."

6 It is noted that this section was amended by section 24 of Chapter 846 of the laws of 1981. The amendment is not pertinent to this proceeding.


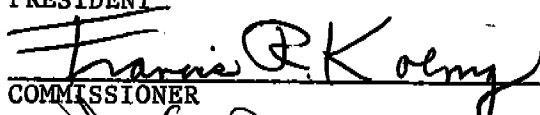

E. That in accordance with the foregoing, the items specified in Finding of Fact "6-a, c, g, h and k" are properly exempt from tax. Also, the Audit Division has conceded that tax was previously paid in connection with Item "6-j". However, the balance of the items specified in Finding of Fact "6", as well as all of the charges specified in Finding of Fact "7" are properly subject to tax. Furthermore, the items specified in Finding of Fact "8-a (as conceded), b, d, g, h (only insofar as conceded), j, k (only insofar as conceded), l, m, n and p (only insofar as conceded)," are properly exempt from tax, with the balance of the items listed in Finding of Fact "8" subject to tax. Finally, petitioner has not sustained its burden of proving that tax was paid on the purchase of either vehicle (see Finding of Fact "9") or that such vehicles when purchased were otherwise entitled to exemption from tax.

F. That the petition of Diemolding Corporation is granted to the extent indicated in Conclusions of Law "A" and "E", but is in all other respects denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated November 30, 1982, as recomputed in accordance herewith, is sustained.

DATED: Albany, New York

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STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER