

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Imperial Wallcovering, 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:
6/1/76-5/31/79.

State of New York
County of Albany

Kathy Pfaffenbach, 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 January, 1983, she served the within notice of Decision by certified mail upon Imperial Wallcovering, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Imperial Wallcovering, Inc.
Underwood Ave.
Plattsburgh, NY 12901

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
24th day of January, 1983.

Kathy Pfaffenbach

Connie R. Highland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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Kathy Pfaffenbach, 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 January, 1983, she served the within notice of Decision by certified mail upon Peter J. Alcala the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter J. Alcala
Collins & Aikman Corporation
210 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 January, 1983.

Kathy Pfaffenbach

Donna C. Hegland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

Imperial Wallcovering, Inc.
Underwood Ave.
Plattsburgh, NY 12901

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Peter J. Alcaly
Collins & Aikman Corporation
210 Madison Avenue
New York, NY 10016
Taxing Bureau's Representative

STATE TAX COMMISSION

Petitioner filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the State Tax Commission renders the following decision.

ISSUES

I. Whether the charge for the service of engraving metal cylinders used in the production of wallpaper is subject to use tax.

II. Whether the charge for an engraving service is subject to use tax where the property upon which the service is performed is purchased out of state and serviced out of state prior to being used in New York State.

FINDINGS OF FACT

1. On April 10, 1980, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Imperial Wallcovering, Inc. in the amount of \$166,161.02 plus interest of \$29,364.44 for a total of \$195,525.46 for the period June 1, 1976 through May 31, 1979.

2. Petitioner has agreed to and paid \$22,423.84 of the tax assessed. At a pre-hearing conference, the Audit Division conceded to the cancellation of \$24,093.70, reducing the amount in disagreement to \$142,067.32.

3. Petitioner is in the business of manufacturing all types of wallpaper utilizing a gravure printing process. During the period under review, petitioner purchased blank metal cylinders from an out of state vendor. Petitioner then sent these cylinders to another out of state company where they were copper and chrome plated and engraved with wallpaper designs. Following the engraving service, petitioner brought the cylinders into New York State for use in its wallpaper manufacturing operation.

4. On audit, the Audit Division determined that use tax was due on the charge for the engraving service. Petitioner maintained that, since the engraved cylinders were used directly and predominantly in production they would be exempt from use tax if purchased already engraved, therefore the charge for the engraving of plain cylinders should likewise be exempt. Petitioner further argued that the engraving process takes place out of state prior to petitioner taking possession; therefore, when the property comes into New York State it is an engraved cylinder which would ordinarily qualify for the manufacturing exemption. Petitioner believes that services rendered to property outside the state are taxable only if such property is subject to the use tax or will be subject to the use tax when the property comes into the state.

5. Petitioner capitalized the cost of the blank cylinders and the engraving service and the engraved cylinders had a minimum useful life of at least two years.

CONCLUSIONS OF LAW

A. That section 1105(c)(2) of the Tax Law imposes a sales tax on the services of "producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed".

B. That section 1110 of the Tax Law imposes a tax on the use of personal property upon which the services described in section 1105(c)(2) have been performed when no sales tax has been paid for the same, and further provides that the use tax is applied against the charges for the service (Mohawk Airlines, Inc. v. Tully, 75 A.D.2d 249).

C. That, while section 1115(a)(12) exempts from sales and use taxes machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property and parts with a useful life of more than one year, the aforesaid section is limited in scope. It exempts only machinery or equipment and component parts used in production; it does not provide an exemption for services. Therefore, although purchases of cylinders by petitioners would be exempt under section 1115(a)(12), purchases of engraving services performed on the cylinders are not exempt and the Audit Division properly determined these services to be taxable.

D. That section 1110 of the Tax Law "does not distinguish as to whether services have been performed within or without the State" (Mohawk Airlines, Inc, supra). Therefore, the fact that the service was performed outside New York does not automatically render the service exempt from the use tax, nor does the fact that the property itself is exempt render services performed on such property exempt.

E. That the petition of Imperial Wallcovering, Inc. is granted to the extent indicated in Finding of Fact "2"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 10, 1980; and that, except as so granted, the petition is in all other respects denied.

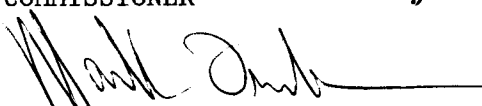
DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER