

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

H. J. HEINZ COMPANY

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ Periods  
September 1, 1967 through November 30, 1971

State of New York  
County of Albany

Martha Funaro , 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 13th day of February , 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon H. J. Heinz Company

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: H. J. Heinz Company  
P.O. Box 57  
1062 Progress Street  
Pittsburgh, Pennsylvania  
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 Post Office Department within the State of New York.

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

13th day of February , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

H. J. HEINZ COMPANY

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Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Periods  
September 1, 1967 through November 30, 1971

State of New York  
County of Albany

Martha Funaro , 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 13th day of February , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon Jeremiah F. Manning, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jeremiah F. Manning, Esq.  
Ainsworth, Sullivan, Tracy & Knauf  
75 State Street  
Albany, New York 12207  
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 Post Office Department within the State of New York.

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

13th day of February , 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**February 13, 1973**

**H. J. Hains Company  
P.O. Box 57  
1062 Progress Street  
Pittsburgh, Pennsylvania**

**Gentlemen:**

Please take notice of the **DETERMINATION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **sections 1138 & 1243** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

  
**Paul B. Coburn**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
H. J. HEINZ COMPANY	:	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 Periods September 1,	:	
1967 through November 30, 1971.	:	
	:	

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Applicant, H. J. Heinz Company, has 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 periods September 1, 1967 through November 30, 1971. (File No. 25-0542520C). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York on July 18, 1972, at 10:00 A.M. Ainsworth, Sullivan, Tracy and Knauf, Esqs. (Frank J. Warner, Jr., Esq. and Jeremiah F. Manning, Esq., of Counsel) appeared for the applicant. Saul Heckelman, Esq. (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUE

Were the corrugated containers in which applicant, H. J. Heinz Company, shipped food products to retailers in New York State during the periods September 1, 1967 through November 30, 1971, subject to sales tax?

FINDINGS OF FACT

1. On December 10, 1970, the Income Tax Bureau advised applicant, H. J. Heinz Company, in writing, that corrugated cartons used to pack the company's products, which did not reach the ultimate consumer along with the products they contained, were subject to the sales tax and requested that figures be submitted in order that the appropriate amount of sales tax due could be computed.

2. In compliance with the aforesaid letter, applicant, H. J. Heinz Company, computed the amount of sales tax due on said corrugated cartons for the periods September 1, 1967 through April 28, 1971, and paid a tax of \$48,750.85. In computing said tax they eliminated sales to New York distributors and wholesalers, exports sales and institutional sales.

3. On January 21, 1972, applicant, H. J. Heinz Company, filed an application for credit or refund of state and local sales or use taxes in the sum of \$48,750.85. The application was denied by the Income Tax Bureau on February 1, 1972.

4. During the periods September 1, 1967 through November 30, 1971, applicant, H. J. Heinz Company, was a Pennsylvania Corporation with its principal place of business and home office in Pittsburgh, Pennsylvania. It was authorized to do business in the State of New York. It was engaged in the business of the manufacture and sale of food and food products.

5. During the periods September 1, 1967 through November 30, 1971, applicant, H. J. Heinz Company, owned no real property in

New York State. It did not manufacture any food or food products in New York State. It **did** manufacture cans in a leased factory in New York State. It maintained a district sales office in New York State. All sales to purchasers located within New York State were filled and shipped from distribution centers located outside of New York State. All administration, accounting and billing operations were conducted outside of New York State.

6. Approximately 64.6% of products manufactured by applicant, H. J. Heinz Company, were packed in glass containers. The glass containers were purchased from glass companies in corrugated containers. The glass containers were delivered to the company in unsealed corrugated containers, removed from the cartons, filled with the food product, repacked in the same corrugated containers, shipped to a distribution warehouse and stored on a pallet. Upon receipt of orders the cartons of food were then shipped to customers. Since the glass containers were purchased "Glass in Case", the company did not receive a breakdown as to the cost of the glass containers and the cost of the corrugated containers from the glass manufacturer.

7. Approximately 35.4% of the products manufactured by applicant, H. J. Heinz Company, were packed in metal cans. These cans, after having been filled with the food products, were packed in corrugated containers. These corrugated containers were either purchased or manufactured by the company. They were shipped to distribution warehouses and stored on pallets. The cases were then shipped to customers upon receipt of orders.

8. Applicant, H. J. Heinz Company, did not state in its bills or invoices any price or charge for the corrugated containers separately from the price or charge for the contents thereof.

9. Applicant, H. J. Heinz Company, did not receive resale certificates from any of the wholesalers or retailers to whom they sold their food products.

10. Approximately 61% of H. J. Heinz net sales in New York State after deduction of institutional and export sales were made directly to retailers. These retailers generally removed the products from the corrugated containers and placed them on their shelves for sale to the consumer. In such cases the cartons had little or no salvage value and were disposed of by the retailers. On occasion some of the cartons were used by the retailers to store and display the food products on their shelves.

11. The remaining 39% of applicant, H. J. Heinz Company's net sales in New York State were made to wholesalers and distributors who in turn resold the cartons of food products to retailers.

12. The corrugated cartons in which applicant, H. J. Heinz Company, shipped its food products in interstate commerce were required to meet standards and specifications required by the Interstate Commerce Commission and Federal Food and Drug Administration.

13. Applicant, H. J. Heinz Company, maintained and utilized a highly specialized cost accounting system. The cost of packaging was treated as an expense of the manufacture of each of its food products. An increase in the cost of packaging or sales tax imposed upon the packaging will increase the cost of manufacture of the food product and result in an ultimate increase in the price of the food product to the consumer. A sales tax imposed on sales of

corrugated containers to purchasers in New York State will result in the increase of the price of the food product to a consumer in New York State.

CONCLUSIONS OF LAW

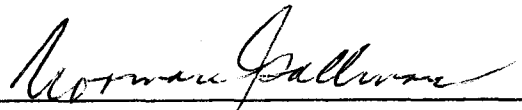
A. That the sale by H. J. Heinz Company to retail food merchants of cans and bottles of food products packed in corrugated containers, during the periods September 1, 1967 through November 30, 1971, constituted a retail sale of said corrugated containers to said retailers in accordance with the meaning and intent of section 1101(b)(4) of the Tax Law, since the retailer did not resell the corrugated containers with the contents therein. Colgate-Palmolive Peet Company v. Lazarus, 308 N.Y. 333 (1955).

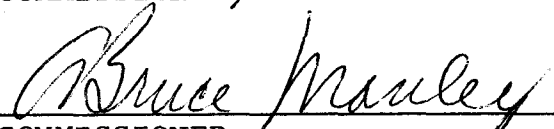
B. That the exemption from sales tax for food and food products provided for by section 1115(a)(1) of the Tax Law does not extend to the corrugated containers in which the food or food products are shipped, since such corrugated containers do not constitute food or food products.


C. That the application of H. J. Heinz Company is denied.

DATED: Albany, New York  
February 13, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER



October 15, 1973

Cahill, Gordon & Reindel  
80 Pine Street  
New York, New York 10005

Attention: Library

Gentlemen:

As per your request, please find enclosed  
a copy of a determination rendered by the New York  
State Tax Commission - H. J. Heinz Company.

Sincerely,

EDWARD ROOK  
SECRETARY TO THE  
STATE TAX COMMISSION

Enclosure

January 10, 1951

Mr. J. Edgar Hoover  
Federal Bureau of Investigation  
Washington, D.C.

Dear Mr. Hoover:

Reference is made to

your letter of January 9, 1951, regarding the

report of a confidential source in New York

City that a certain individual had been

contacted by a person

known as "John Doe" who  
was said to be a member of the  
Communist Party, U.S.A.

Very truly yours,