

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HUNT-WESSON FOODS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ or Period ~~(s)~~ :
June 1, 1967 through August 1, 1970.

State of New York
County of Albany

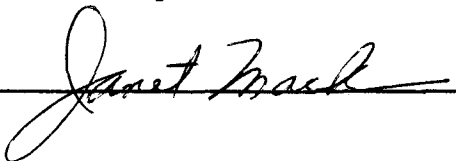
Jean Wager , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September , 1976 , she served the within
Notice of Determination by (~~certified~~) mail upon Hunt-Wesson Foods,
Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Hunt-Wesson Foods, Inc.
1645 West Valencia Dr.
Fullerton, California 92634

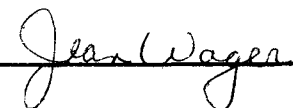
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

29th day of September , 1976.





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June 1, 1967 through August 31, 1970.

State of New York
County of Albany

Jean Wager, 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 29th day of September, 1976, she served the within
Notice of Determination by (~~certified~~) mail upon Alan D. Berlin, Esq.

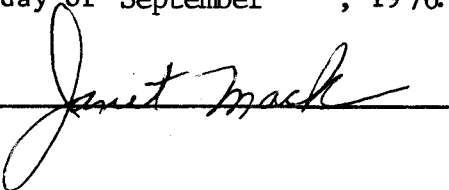
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alan D. Berlin, Esq.
277 Park Ave.
New York, N.Y. 10017

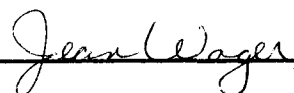
and by depositing same enclosed in a postpaid properly addressed wrapper in a
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of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

29th day of September, 1976.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 29, 1976

TELEPHONE: (518) 457-3850

Hunt-Wesson Foods, Inc.
1645 West Valencia Dr.
Fullerton, California 92634

Gentlemen:

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

Please take further notice that pursuant to Section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision must be commenced within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision or concerning any other matter relative hereto may be addressed to the undersigned. They will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
HUNT-WESSON FOODS, INC.	:	DETERMINATION
for a Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Periods June 1, 1967 through	:	
August 31, 1970.	:	

Applicant, Hunt-Wesson Foods, Inc., applied for a 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, 1967 through August 31, 1970.

The case was submitted for decision on the material previously submitted and referred to L. Robert Leisner, Hearing Officer, for review. The taxpayer was represented by Alan D. Berlin, Esq., and the Sales Tax Bureau was represented by Saul Heckelman, Esq.

ISSUE

Were corrugated cardboard cartons in which the applicant shipped food products to wholesalers subject to sales and use tax?

FINDINGS OF FACT

1. The taxpayer, Hunt-Wesson Foods, Inc. timely filed New York State sales and use tax returns for the period June 1, 1967 through August 31, 1970, and after an audit paid the tax in issue and applied for a refund.

2. A Notice of Denial of refund of sales and use taxes and penalties for the period in issue was issued on February 1, 1972, to the applicant under LD# NY 7184322.

3. The taxpayer applied for a revision of the refund denial.

4. Hunt is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of California. Hunt is engaged in the manufacture and sale of various food products to institutions, wholesalers, and grocery chain stores.

5. Hunt's exclusive activity in the State of New York consisted of the sale of such food products in interstate commerce. All of its activities within the state are incidental to and in aid of such interstate commerce.

6. All or substantially all of Hunt's sales in the State of New York were composed of food products qualifying for the exemption from sales tax provided by §5(a)(1) of the Tax Law.

7. Orders for Hunt's products were solicited within the State of New York by salesmen who were based in Hunt's district offices in Union, New Jersey; Boston, Massachusetts or Cleveland, Ohio. Hunt does not maintain a district or regional sales office within the State of New York. All such orders were relayed to Hunt's headquarters in California for approval.

8. Food products are shipped to customers in New York State from Hunt's various distribution points in New Jersey, Pennsylvania, Connecticut, Louisiana, Georgia and Ohio. Hunt does not maintain a distribution point within the State of New York. Hunt had previously maintained a plant in Albion, New York, but this was shut down in December, 1969.

9. The food products in question are packed in corrugated cardboard cartons for shipment from the various distribution points to customers in the State of New York. Hunt does not impose a separate charge for such cartons nor does it separately list such cartons on its invoices.

10. The sales in question were made to wholesalers in chain stores. There is no dispute as to sales to institutional customers. The wholesalers resold the merchandise to independent grocery and other type of food stores packed in the corrugated cardboard cartons. The food chains usually receive the merchandise at a central distribution point and then distribute such merchandise in the cartons to their individual stores for resale to the public. Title to the cartons passes to the wholesalers and retailers along with the food products contained therein.

11. The use of the cartons by Hunt is necessary to facilitate the packing, shipping, delivery and transfer of title of its food products to its customers. These customers in turn use the cartons in their portions of the distribution chain to display Hunt's products for sale and to pack the products which have been purchased for delivery to the consumer.

12. Hunt has no ownership or control over the cartons subsequent to the time of their delivery to the wholesalers and chain stores.

13. Hunt consented to the fixing of the tax before a determination was made in accordance with §1138(c). The tax was paid on June 1, 1971, and refund sought for that portion of the tax here in issue.

OPINION

The parties make various contentions: The applicant that - the cartons are part of the food sale and exempt, the cartons are part of interstate commerce and should not be taxed, the cartons were not separately sold, and/or their value is too high. The Bureau asserts that the cartons do not reach the ultimate consumer and are taxable. The decisive factors in this case however are whether the applicant sold to retailers, or to ultimate consumers or to others for resales. The applicant pays the tax on containers for institutional sales or they are otherwise exempt or not in issue. The only containers in issue are for food products sold to wholesalers dealing with chains and independents. Such sales to wholesalers are for resale and are tax exempt. Colgate Palmolive Peet v. Joseph, 308 NY 333.

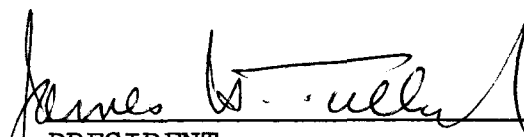
CONCLUSIONS OF LAW

A. The corrugated containers of food products sold to wholesalers who sell the same to independents or chains are not subject to tax, being exempt under the resale exemption. Section 1101(b)(4)(i)(A) of the Tax Law.

B. The taxpayer's application for a refund is granted.

DATED: Albany, New York
September 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER