

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDONIA PRODUCTS CO., INC.

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~XXXXXX~~ Periods
September 1, 1969 through August 31, 1972.

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

State of New York
County of Albany

Janet Mack, 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 4th day of March , 1975, she served the within
Notice of ~~Reduction~~ (or Determination) by ~~(certified)~~ mail upon Fredonia Products

Co., Inc. ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Fredonia Products Co., Inc.
200 Water Street
Fredonia, New York 14063

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)~~
~~xxx~~ 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

4th day of March , 1975.

Richard A. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDONIA PRODUCTS CO., INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(XXXXXXXX)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ Periods
September 1, 1969 through August 31, 1972.

State of New York
County of Albany

Janet Mack , 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 4th day of March , 1975 , she served the within
Notice of ~~Determination~~ (or Determination) by ~~(XXXXXXXX)~~ mail upon Joseph E. Zdarsky, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph E. Zdarsky, Esq.
Kavinoky, Cook, Hepp, Sandler, Gardner & Wisbaum
120 Delaware Avenue
Buffalo, New York, 14202
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

4th day of March , 1975.

Kathleen L. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
March 4, 1975

Fredonia Products Co., Inc.
200 Water Street
Fredonia, New York 14063

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 and 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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|--|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| FREDONIA PRODUCTS CO., 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 September 1, 1969 through | : | |
| August 31, 1972. | : | |

Applicant, Fredonia Products Co., 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 periods September 1, 1969 through August 31, 1972.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on August 21, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Kavinoky, Cook, Hepp, Sandler, Gardner & Wisbaum, Joseph Zdarsky of counsel. The Sales Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Were purchases of sheet pulp used or consumed in the production of grape juice exempt from sales tax as equipment used or consumed in manufacturing?

FINDINGS OF FACT

1. The taxpayer, Fredonia Products Co., Inc., timely filed New York State sales and use tax returns for the periods September 1, 1967 through August 31, 1972.

2. A Notice of Determination of sales and use taxes (and penalties) for the periods September 1, 1969 through August 31, 1972, was issued on April 19, 1973, against Fredonia Products Co., Inc. for \$4,286.65 tax interest and penalty.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax.

4. The taxpayer purchases sheet pulp which is used as a press aid and filter aid in the production of grape juice.

5. The Sales Tax Bureau asserts that the purchases of sheet pulp are taxable and the taxpayer asserts that the sheet pulp is equipment used or consumed directly in the production of tangible personal property.

6. The production process takes place as follows: After the grapes pass through a machine known as a stemmer and crusher, which extracts the grape stems and crushes the grapes, the crushed grape mass is directed into holding tanks. At this time the sheet pulp, cut in strips of various sizes, is added to the mass in the holding tanks. When placed in the holding tanks, the sheet pulp absorbs grape juice and begins to disperse throughout the tank. Eventually the pulp becomes totally dispersed throughout the liquid in the tanks.

After the pulp becomes suspended in the crushed grape mass, the contents of the holding tank are forwarded to a machine known as a dejuicer. The dejuicer operates as a revolving screen set on an angle which rotates the slimy grape mass up the side of the screen. At the top of the screen the free-running juice is drained off and the whole grape material is left on the screen. Without the addition of the pulp the slimy grape mass which is fed into the dejuicer would not climb the screen, as heretofore described, because the grape mass has a very high fluidity. The pulp, dispersed throughout the grape mass, increases the adhesive properties of the mixture and allows the grape mass to adhere to the screen and therefore climb the angle of such screen. The dejuicer does not function well without the addition of sheet pulp to the crushed grape mass.

The whole grape material that remains on the dejuicer screen, together with the dispersed sheet pulp, is now directed to the press. There are two uses for the sheet pulp at this stage: First, it acts as a binding agent, retarding the movement of the grape substance in the press. Due to the slimy nature of the grape mass, the screw-type press used in this process would continually slip without the addition of the pulp. The sheet pulp gives the mixture a higher consistency and allows the press to develop the proper compression so that the grape juice may

be extracted. In addition, the presence of the pulp allows the large "cake" formed in the press to develop channels, thereby allowing the free-running juice to flow through the cake out of the press. The addition of the sheet pulp is essential for the press to operate properly. At this point, the "cake" left in the press is removed as waste; the pressed juice passes on to the filter.

Additional strips of sheet pulp are added at the filtration stage. At this stage, the pulp has a clarification function, helping to remove much of the suspended solids present in the grape juice. This is accomplished by drawing the juice and the pulp suspended in such juice onto a perforated rotating belt, drawing the juice through the rotating belt, leaving the suspended solids and sheet pulp on top of the belt. The sheet pulp is then recycled back to the holding tanks and the procedure described hereinbefore is duplicated.

CONCLUSIONS OF LAW

A. The sheet pulp is not equipment. Equipment connotes an implement such as a tool, utensil or instrument which has some durability. The Tax Law requires it to have a life of more than one year. The sheet pulp is a raw material used and disposed of during the operation and does not become a part of the finished product.

B. The purchases of sheet pulp are subject to sales tax.

- 5 -

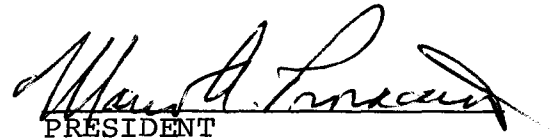
C. The taxpayer acted in good faith. The penalties are abated.

D. The deficiency in tax is sustained and pursuant to the Tax Law, interest shall be added to the total amount due until paid.

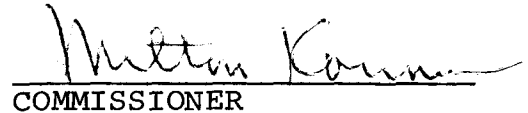
DATED: Albany, New York

February 27, 1975

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER


COMMISSIONER