

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~XXXXXXXXXX~~
Application :

of

AUBURN CROWN TIRE CO., INC. :

AFFIDAVIT OF MAILING
OF NOTICE OF ~~XXXXXXXXXX~~ DETERMINATION
BY ~~XXXXXXXXXX~~ MAIL

For a Redetermination of a Deficiency or
a Refund of **Sales and Use** :
Taxes under Article(s) **28 and 29** of the :
Tax Law for the ~~XXXXXX~~ Period :
8/1/65 - 5/31/67.

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 **2nd** day of **December** , 19**75**, she served the within
Notice of ~~XXXXXXXXXX~~ Determination) by ~~XXXXXXXXXX~~ mail upon **AUBURN CROWN**

TIRE CO., INC. ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: **Auburn Crown Tire Co., Inc.**

**5 Garden Street
Auburn, New York 13021**

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 ~~XXXXXXXXXX~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

2nd day of **December** , 19**75**

Mary Dray

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~XXXXXXXX~~
Application :

of

AUBURN CROWN TIRE CO., INC. :

AFFIDAVIT OF MAILING
OF NOTICE OF ~~XXXXXXXX~~ DETERMINATION
BY ~~XXXXXXXX~~ MAIL

For a Redetermination of a Deficiency or
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Taxes under Article(s) **28 and 29** of the :
Tax Law for the ~~XXXXXX~~ Period :
8/1/65 - 5/31/67.

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 **2nd** day of **December**, 19 **75**, she served the within

Notice of ~~XXXXXXXX~~ Determination) by ~~XXXXXXXX~~ mail upon **WILLIAM GOLDMAN, ESQ.**

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: **William Goldman, Esq.**
144 Genesee Street
Auburn, New York 13021

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

2nd day of **December**, 19**75**.

Mary Groff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) 457-3336

DATED: Albany, New York
December 2, 1975

Auburn Crown Tire Co., Inc.
5 Garden Street
Auburn, New York 13021

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
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
AUBURN CROWN TIRE CO., INC. :
for a Revision of a Determination or :
for a Refund of Sales and Use Taxes :
under Articles 28 and 29 of the Tax :
Law for the Period August 1, 1965 :
through May 31, 1967. :

Applicant, Auburn Crown Tire Co., Inc., 5 Garden Street, Auburn, New York 13021, 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 August 1, 1965 through May 31, 1967.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on June 29, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer appeared by William Goldman, Esq. and the Sales Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq. of counsel).

ISSUES

I. Was the applicant entitled to a manufacturing exemption on the purchase and rental of equipment used in the applicant's production of retread tires on the applicant's and its customer's own tire casings pursuant to section 1115(a)(12) of the Tax Law?

II. Was the applicant entitled to a manufacturing exemption for purchases of electricity and utilities for the same operations pursuant to section 1115(c)?

FINDINGS OF FACT

1. The taxpayer, Auburn Crown Tire Co., Inc., timely filed New York State sales and use tax returns for the period August 1, 1965 through May 31, 1967.

2. A Notice of Determination for sales and use taxes including penalties for the period August 1, 1965 through May 31, 1967, was issued on October 5, 1967, against applicant under Notice No. 15-0559548.

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

4. The taxpayer operates a tire retreading facility located on Garden Street in the City of Auburn, New York. Cord bodies of used tires are brought to taxpayer's plant where new layers of rubber tread were affixed to the existing cord bodies. This facility was able to accommodate both truck and passenger car retreading. During the period in question, approximately 16% of taxpayer's retreading involved truck tires while 84% involved passenger car tires.

5. During the period in question, it was taxpayer's general policy to purchase used cord bodies, retread them, and then offer them for resale. In the case of passenger car retreads, this policy was strictly adhered to. In the case of truck tires,

however, the taxpayer also received cord bodies for custom retreading. Ownership of the cord body was returned by the customer and the taxpayer performed a retreading service for the particular customer.

6. The retreading operation required the use of specialized machinery and the consumption of great quantities of electricity and gas. The same machinery was utilized for the custom and non-custom retreading.

CONCLUSIONS OF LAW

A. That the applicant is not entitled to a manufacturing exemption on the purchase and rental of equipment used in the applicant's production of retread tires. The language of section 1115(a)(12) in force during the taxable period in question required that the purchased or rented machinery and equipment be used directly and exclusively in the production of tangible personal property. The fact that applicant engaged in the custom retreading of tires owned by the respective customers indicates a non-exclusive use of the machinery and equipment in question. Therefore, the taint of this non-production use involving no resale of the retreaded tire prevents the application of the exemption of section 1115(a)(12).

B. That the applicant is not entitled to a manufacturing exemption on the purchases of electricity and utilities for the retreading operation. Section 1115(c) requires that the use or

consumption of the gas or electricity be directly and exclusively in the production of tangible personal property. The customer retreading of the tires of certain customers is a non-production service. The productive use is therefore non-exclusive and the exemption of section 1115(c) does not apply.

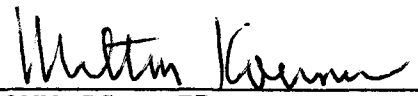
C. That the applicant acted in good faith in the preparation of his tax returns for the period in question.

D. That the application of Auburn Crown Tire Co., Inc. is denied to the extent of upholding the assessment of additional sales tax and interest. The application is granted as regards the cancellation of assessed penalties.

DATED: Albany, New York
December 2, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER