

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DRAKE MANUFACTURING COMPANY  
DIVISION OF MACLER INDUSTRIES, INC.  
For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ period June 1, 1967  
through May 31, 1970

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

State of New York  
County of Albany

Linda Wilson, 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 26th day of January, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon DRAKE MANUFACTURING CO. - DIVISION OF MACLER INDUSTRIES, INC. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Drake Manufacturing Company  
Division of Macler Industries, Inc.  
Howard Street  
Friendship, New York 14739  
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

26th day of January, 1972.

Martha Furman

Linda Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DRAKE MANUFACTURING COMPANY -  
DIVISION OF MACLER INDUSTRIES, INC.  
For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
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Tax Law for the ~~Year(s)~~ period June 1, 1967  
through May 31, 1970

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

State of New York  
County of Albany

Linda Wilson, 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 26th day of January, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon NORMAN S.

FITZER, ESQ. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Norman S. Fitzer, Esq.  
Fleischer, Fitzer & Embser  
Ebenezer Oil Co. Bldg.  
Wellsville, New York 14895

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

26th day of January, 1972

Martha Furuta

Linda Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
January 26, 1972

Drake Manufacturing Company  
Division of Macler Industries, Inc.  
Howard Street  
Friendship, New York 14739

Gentlemen:

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

Please take further notice that pursuant to section(s)  
1138 & 1250 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 relating 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

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
DRAKE MANUFACTURING CO.-DIVISION OF :  
MACLER INDUSTRIES INC. : 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 Period June 1, 1967 through May 31, :  
1970. :

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Drake Manufacturing Co.-Division of Macler Industries Inc. applied for a redetermination of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1967 through May 31, 1970. A formal hearing was held at the offices of the State Tax Commission in the State Office Building, Niagara Square, Buffalo, New York on August 3, 1971, before L. Robert Leisner, Hearing Officer.

The taxpayer was represented by Norman B. Fitzer, Esq., Wellsville, New York, and the Sales Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Was the phenol resin, used to produce a specification of hardness or soft tempering and a specification of tolerance or dimension in the taxpayer's foundry operation, exempt as a component part of the taxpayer's product under section 1101(b) 4(i)A of the Tax Law?

II. Was phenol resin used in the taxpayer's foundry operation exempt as a fuel under section 1115(c) of the Tax Law?

FINDINGS OF FACT

1. A Notice of Determination and Demand for payment of sales and use taxes for the period June 1, 1967 to May 31, 1970 was sent

to the taxpayer on November 25, 1970, under Notice No. 90,743,845 and Identification No. 16-6053554-02.

2. The taxpayer made timely application for a revision of the Sales Tax Bureau's determination of the sales tax, asserting that purchases of resins consumed and used in its shell moldings during foundry operations were exempt from sales tax as component parts of its manufactured products or exempt as a fuel.

3. The taxpayer operated a foundry in Wellsville, New York producing castings of precision parts for auto manufacturers and others.

4. The taxpayer's operation employed the "shell molding" process using resins mixed with sand for its molds.

5. Iron is heated and melted and the temperature is raised to 2700 degrees. The molten iron is poured into the molds. As the heat penetrates the mold, the resin begins to burn. The resin slows the cooling process. The resin is completely oxidized, or combusted, and vanishes. The mold subsequently breaks down and the remaining sand runs loose. Only a pile of sand remains.

6. The burning resin produces a controlled heat and slows the cooling process and results in a softer metal for easier machining and also a more accurate shape and dimension. The hardness of the metal, the shape and the dimension are requirements of the finished product specified by the customer.

#### CONCLUSIONS OF LAW

A. No determination is made as to whether or not the resin becomes a component part in producing hardness, dimension or tolerance, of the finished casting.

B. The phenol resin which burns and disappears in the taxpayer's foundry operation is a fuel exempt from sales tax under section 1115(c) of the Tax Law.

C. The taxpayer's application is granted. It is determined that there are no taxes, penalties or interest due from the taxpayer for the period June 1, 1967 to May 31, 1970 under Notice No. 90,743,845 and Identification No. 16-6053554-02.

DATED: Albany, New York  
*January 26, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kravitz*  
\_\_\_\_\_  
COMMISSIONER