

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

C.A. DURR PACKING CO., INC.

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)) Period Aug. 1; 1965
through May 31, 1967

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 25th day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon C.A. Durr Packing
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: C.A. Durr Packing Co., Inc.
1 Barnes Avenue
Utica, New York 13502

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

25th day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~(Year(s))~~ Period Aug. 1; 1965
through May 31, 1967

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 25th day of August , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Timothy D. Lockwood, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Timothy D. Lockwood, Esq.
Lockwood & Lockwood
285 Genesee Street
Utica, New York 13501
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

25th day of August , 1972.

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

August 25, 1972

C.A. Durr Packing Co., Inc.
1 Barnes Avenue
Utica, New York 13502

Dear Sir:

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

Please take further notice that pursuant to **sections 1243 & 1138**
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,

L. Robert Leisner

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
C.A. DURR PACKING 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 Period August 1, 1965	:	
through May 31, 1967.	:	

The taxpayer 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, Utica, New York, on March 16, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Timothy D. Lockwood, Esq., and the Income Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUES

Are the inedible sausage casings which are removed from skinless frankfurters before leaving the taxpayer's factory subject to a sales and use tax?

Is the taxpayer liable for penalties in addition to the tax for the period in issue?

FINDINGS OF FACT

1. The taxpayer, C.A. Durr Packing 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 of sales and use taxes and penalties for the period August 1, 1965 to May 31, 1967, was issued on July 16, 1968, against the taxpayer under Notice No. 90,755,313.

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

4. The taxpayer makes skinless frankfurters of which 80% are artificially colored and 20% are a natural color. The frankfurters are formed in inedible sausage casings which are removed from the frankfurters before they leave the taxpayer's plant. The taxpayer uses two different sausage casings, one which is more expensive, with an artificial coloring agent on its lining and the other which is less expensive without any coloring agent. The evidence did not establish the difference in cost of the color lined casing and the natural casing. The colored frankfurter receives its color from the color lined casing.

5. The taxpayer contends that since both sausage casings are necessary to form the frankfurters which are exempt as an edible food, or nontaxable as items for resale, that the sausage casings are also exempt from sales tax.

6. The taxpayer, in good faith, believed that the sausage casings were tax exempt.

CONCLUSIONS OF LAW

A. The sausage casings themselves are not part of the finished product, do not leave the plant as a finished product, and are not resold. They are taxable under the sales and use tax. The portion of the cost of the casing attributable to the coloring of the


frankfurter would be exempt, but the taxpayer has failed to show this cost. Whether this is a substantial or insignificant cost is not indicated. Here under all the evidence, all the sausage casings are taxable. The taxpayer acted in good faith and no penalty should be imposed.

B. The taxpayer's application is denied and the assessment of sales tax is sustained, except that the penalty is cancelled.

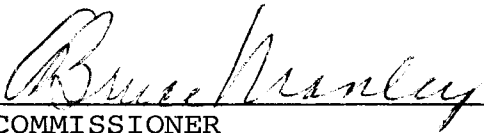
C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
August 25, 1972

STATE TAX COMMISSION



COMMISSIONER



COMMISSIONER



COMMISSIONER