

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
FINCH, PRUYN & COMPANY, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
~~Dec. 1, 1968 to Nov. 30, 1971 and Sept. 1,~~  
1973 to Aug. 31, 1976.  
State of New York  
County of Albany

Marsina Donnini, 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 21st day of June, 1977, she served the within

Notice of Determination by ~~certified~~ mail upon Joseph H. Murphy, Esq. &  
Hancock, Estabrook, Ryan,  
Shove & Hust, Esqs. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Joseph H. Murphy, Esq.  
as follows: Hancock, Estabrook, Ryan, Shove & Hust, Esqs.  
1400 Mony Plaza  
Syracuse, New York 13202

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

21st day of June, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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FINCH, PRUYN & COMPANY, INC.

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For a Redetermination of a Deficiency or :  
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Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s) XXX~~ Period(s) :  
Dec. 1, 1968 to Nov. 30, 1971 and Sept. 1,  
1973 to Aug. 31, 1976.  
State of New York  
County of Albany

Marsina Domini, 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 21st day of June, 1977, she served the within

Notice of Determination by ~~(certified)~~ mail upon Finch, Pruyn &  
Company ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Finch, Pruyn & Company, Inc.  
1 Glen Street  
Glens Falls, New York

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 ~~XXXXXXXXXXXX~~  
~~XXXXXX~~ 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

21st day of June, 1977.

Marsina Domini

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

June 21, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Finch, Pruyn & Company, Inc.  
1 Glen Street  
Glens Falls, New York

Gentlemen:

Please take notice of the **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 deci-  
sion 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  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
FINCH, PRUYN & COMPANY, INC.	:	
for Revision of a Determination or for	:	DETERMINATION
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Periods December 1, 1968 to	:	
November 30, 1971 and September 1, 1973	:	
to August 31, 1976.	:	

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Finch, Pruyn & Company, Inc., 1 Glen Street, Glens Falls, New York 12801, filed petitions for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods December 1, 1968 through November 30, 1971, (Notice No. 90,749,701) and for the periods September 1, 1973 through August 31, 1976 (Notice No. 90,740,112). (File No. 01854).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Bldg. 9, State Campus, Albany, New York, on January 19, 1977 at 9:15 A.M. Applicant appeared by Hancock, Estabrook, Ryan, Shove & Hust, Esqs. (Joseph H. Murphy, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Harry Kadish, Esq., of counsel).

ISSUES

I. Whether certain chemicals used in the production of wood pulp, namely, sulphur dioxide, soda ash, caustic soda, sulphur and ammonia, were intended to be converted into, and did become a component part of the product produced or manufactured for sale by the purchaser.

II. Whether the purchase by petitioner of the chemicals used to produce pulp for the manufacture of paper constituted tangible personal property for resale as such or as a physical component of tangible personal property, exempt from the imposition of the use tax.

III. Whether chlorine and caustic soda were intended to be converted into, or become a component part of the product produced or manufactured for sale by the purchaser, so as to be exempt from the imposition of the use tax.

IV. Whether the "defoamers" and "slimicides" were intended to be converted into and become a component part of the product manufactured so as to be exempt from the imposition of the use tax.

V. Whether reasonable cause exists for the waiver of interest in excess of the minimum interest, and the penalties imposed pursuant to section 1145(a) of the Tax Law.

FINDINGS OF FACT

1. The petitioner, Finch, Pruyn & Company, Inc., is a domestic corporation organized under the laws of the State of

New York, maintaining its principal place of business at 1 Glen Street, Glens Falls, New York. The corporation is engaged in the manufacture of a fine and high grade paper used in the printing of books, business forms and other written media of communication.

2. The petitioner executed a consent extending to December 20, 1972 the period for the assessment of sales and use taxes with respect to the periods December 1, 1968 through August 31, 1969. On December 12, 1972, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the petitioner under Notice No. 90,749,701 for the periods December 1, 1968 through November 30, 1971, indicating additional tax due of \$351,534.49, plus penalty and interest of \$109,683.39, for a total of \$461,217.88. The Sales Tax Bureau cancelled \$151,178.57 of the tax, plus penalty and interest of \$45,438.90, for a total cancellation of \$196,617.47, leaving a balance due and owing of \$264,600.41. The petitioner timely filed an application for a hearing to review the aforementioned determination.

3. On December 12, 1972, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the petitioner under Notice No. 90,740,112 for the periods September 1, 1973 through August 31, 1976, indicating additional tax of \$451,902.92, plus penalty and interest of \$164,604.18, for a total of \$616,507.10. The petitioner timely filed an application for a hearing to review the aforesaid determination.

4. The petitioner produces its own pulp from trees which are cut and delivered to it by independent contractors in sticks of wood approximately four feet long. The wood is then stored in a large log pile. It then goes into a wood room where it is debarked. From there it goes into a chipper where it is cut up into small chips. The chips are then conveyed to a pulp mill through pipes and are put into storage and drawn out of the digester, a large pressure cooker, about one hundred feet tall, as required. The chips are fed in at the top, and under pressure of about one hundred and fifty (150) pounds per square inch, chemicals are added and the chips begin to lose some of their properties. The purpose of this process and the use of the chemicals is to take out of the wood the "lignin," (a very complex group of chemicals which act as a glue to make the wood solid), and reclaim the cellulose fiber which is pulp. By the time they reach the bottom of the digester, most of the chips have disintegrated, and the cellulose fibers had been loosened from the lignians. The result is pulp in a liquid suspension known as "slurry." There were two processes used: (a) The "neutral sulfite semi-chemical" process in which the lignin was softened, but the chip was not completely defibered and had to be done so mechanically afterward; and (b) Starting in 1970, the "ammonia-based bi-sulfite" process in which the chip comes out of the continuous digester as a pulp slurry. With respect to the first

process, the petitioner used a combination of soda ash and sulphur dioxide until 1970, and after that, ammonia and sulphur dioxide were used. In other words, the chemicals used in the process described above consist of sulphur dioxide, soda ash, ammonia and sulphur.

5. Once the wood chip has been broken up, it goes into a "blow tank" where the fibers are exploded. From there it goes on to a process where it is further refined. Because of the wood density, some chips may not have disintegrated sufficiently, and they are culled out. The pulp then goes through further washing and refining. The soluble lignin is washed away. At this point, the liquid slurry has the color of wood, like a brown kraft paper bag. To produce the type of paper which the petitioner manufactured, it was necessary to convert the brown pulp into a white pulp. The first stage in whitening is a chlorination process using gaseous chlorine. The pulp slurry at this point turns to a bright yellow-orange. It is then washed and treated with caustic soda, chemically known as sodium hydroxide. The slurry now turns to a deep brown. It is again washed and treated with a mixture of caustic soda and chlorine which forms sodium hypo-chlorite, commonly known under the trademark of "Chlorox." Its purpose is to break the double bonds in the lignin remaining within the cellulose fiber, in order to destroy the color-forming double bonds.

The pulp then becomes white. The pulp slurry is now washed and ready for the paper mill. It is placed in storage tanks to be used as required.

6. The slurry of pulp and water is pumped to the paper mill. It is mixed with purchased pulp, generally long fiber pulp purchased principally from Canada by the petitioner. It is mixed with other materials which are not in issue and with two other materials which are in issue, viz, "defoamer" and "slimicide."

7. The "defoamer," a fatty-type substance, is added because trapped air gets into the fiber and water mixture during the mixing, transporting and pumping process. If trapped air gets on the paper machine, it forms small holes or thin spots on the paper. The defoamer weakens the wall of the air bubble and allows the air to escape, thus preventing the formation of small holes and spots on the paper.

8. Slimicides are organic chemicals which inhibit the growth of bacteria and slime organisms, so as to prevent decay and mold from forming on the paper. It destroys bacteria, prevents unpleasant odors and prevents the breaking up of the paper.

9. The pulp slurry is then fed into a head box where it is thoroughly mixed and metered onto a fast moving, very fine wire screen. At this point, suction is applied to remove the water. The sheet of paper then travels from the screen through a press section, where more moisture is squeezed out. It is then put

through a number of pressure-filled steam vessels or dryers. It is also fed under pressure through a series of rolls known as a "calendar." The paper then goes through a rewinder which puts it in roll form. It would then be shipped from the petitioner's plant in rolls or in sheets, in which case it would go through a cutter.

10. When the paper is dry, it receives a surface treatment consisting of starch, which is not in issue, and flake caustic, which is in issue. The flake caustic makes it possible for the starch to form a film on the surface of the paper, 95% of which remains with the finished product. The representative for the Sales Tax Bureau conceded that the flake caustic is a component part of the paper used for resale and, therefore, exempt from the imposition of sales and use taxes.

11. With respect to the chemicals used to produce the wood pulp, in the process of removing the lignins from the wood and of reclaiming the cellulose fibers, viz., sulphur dioxide, soda ash, ammonia and sulphur, only about one (1%) percent remains with the pulp. With respect to the process of whitening or removing the color from the pulp, only about one (1%) percent of the chemicals used in said process, i.e., caustic soda (sodium hydroxide) and hypochlorite (caustic soda and chlorine, commonly known as "chlorox") remain.

12. About eight to twelve percent of the defoamers and slimicides remain with the end product, the finished paper. The slimicide is a necessary part of the end product. If the slimicide were not present in the petitioner's paper manufacturing process as described above, it would have to be added. The defoamers consist of fatty substances that help give strength to the finished paper.

13. The petitioner submitted schedules of the dollar amounts of each of the chemicals used during each of the tax quarters within the tax periods in issue (petitioner's exhibits 1 & 2). The Sales Tax Bureau did not submit any evidence to controvert said figures.

14. Reasonable cause exists for the failure to pay sales and use taxes with respect to the chemicals in issue.

#### CONCLUSIONS OF LAW

A. That the chemicals, to wit, sulphur dioxide, soda ash, caustic soda, sulphur and ammonia, used in the production of wood pulp by the petitioners in its manufacture of high grade paper for resale, were not intended to be converted into nor did they become a component part of the product produced or manufactured for sale by the purchaser; that said chemicals were intended to and were used to remove the impurities in the wood and to release the cellulose fibers from the wood chips; that the chemicals used to produce the wood pulp were supplies.

B. That the purchase by the petitioner of the chemicals referred to in Conclusion of Law "A", supra, does not constitute tangible personal property for resale as such or as a physical component part of tangible personal property, within the intent and meaning of section 1101(b)(4)(i)(A) of the Tax Law.

C. That the chemicals referred to in Conclusion of Law "A", supra, were not exempt from use tax within the intent and meaning of section 1118(4) of the Tax Law.

D. That the chemicals used to remove the color from the pulp slurry (whitening process), namely, chlorine and caustic soda, were not intended to be converted into or to become a component part of the product produced or manufactured by petitioner; that the purchase by petitioner of said chemicals does not constitute tangible personal property for resale as such or as a physical component part of tangible personal property, within the intent and meaning of section 1101(b)(4)(i)(A) of the Tax Law; that the aforementioned chemicals were not exempt from use tax within the intent and meaning of section 1118(4) of the Tax Law.

E. That the defoamers and slimicides were essential to the completeness of the finished product; that the aforementioned materials constituted a component part of the paper manufactured for resale within the intent and meaning of section 1101(b)(4)(i)(A) of the Tax Law, and exempt from use tax within the intent and meaning of section 1118(4) of the Tax Law.

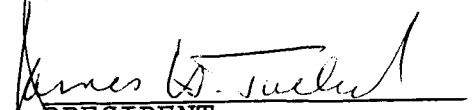
F. That the petition of Finch, Pruyn and Company, Inc. is granted to the extent that the interest, in excess of the minimum interest, and the penalty imposed pursuant to section 1145(a) of the Tax Law be waived.

G. That the additional use tax included in the notices of determination insofar as they include a use tax on flake caustic, defoamers and slimicides, and additional interest and penalty as set forth in Conclusion of Law "F", above, be and the same are hereby cancelled; that the Sales Tax Bureau is directed to recompute the additional use tax in accordance herewith.

H. That the petitions of Finch, Pruyn & Company, Inc. are granted to the extent indicated in Conclusions "E", "F" and "G" and are in all other respects denied; that pursuant to the Tax Law, statutory interest shall be added to the total amount due until paid.

DATED: Albany, New York  
June 21, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER