

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ADVANCE FOOD SERVICE EQUIPMENT, INC.:

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ or Period(s) :
September 1, 1971 through August 31, 1974

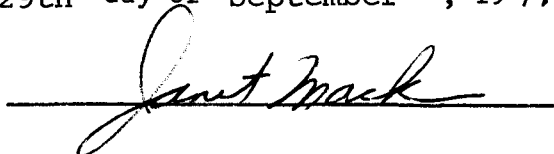
State of New York
County of Albany

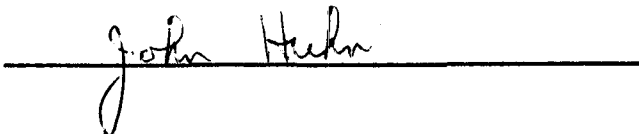
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September , 19 77, she served the within
Notice of Determination by (~~certified~~) mail upon Advance Food
Service Equipment, Inc.
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Advance Food Service Equipment, Inc.
750 Summa Avenue
Westbury, New York 11590
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

29th day of September , 19 77





STATE OF NEW YORK
STATE TAX COMMISSION

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ADVANCE FOOD SERVICE EQUIPMENT, INC.:

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State of New York
County of Albany

John Huhn , 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 29th day of September , 19 77, ~~she~~ served the within
Notice of Determination by (~~certified~~) mail upon William Kimmeldorf,
CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: William Kimmeldorf, CPA
199 Jericho Tpk.
Floral Park, New York 11004

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

29th day of September , 19 77

Janet Back

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

September 29, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Advance Food Service Equipment, Inc.
750 Summa Avenue
Westbury, New York 11590

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ADVANCE FOOD SERVICE EQUIPMENT, 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 September 1, 1971 through	:	
August 31, 1974.	:	

Applicant, Advance Food Service Equipment, Inc., 750 Summa Avenue, Westbury, New York 11590, filed an application 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 September 1, 1971 through August 31, 1974. (File No. 14897).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 2, 1977. Applicant appeared by William Kimmeldorf, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether abrasive materials used in the production of stainless steel products are subject to sales and use tax.

FINDINGS OF FACT

1. Applicant, Advance Food Service Equipment, Inc., is a manufacturer of stainless steel food service equipment which it sells to wholesale distributors.

2. During the refinishing phase of its manufacturing process, applicant applies abrasive materials (i.e., grinding and abrasive discs, belts, bands and wheels) to the product in order to create the desired stainless steel finish.

3. Mr. Milton Schwartz, president of Advance Food Service Equipment, Inc., contended that the abrasive materials used in the refinishing process become part of the finished product and, therefore, should not be subject to tax. Mr. Schwartz asserted that an aluminum oxide compound remains present in the finished product in miniscule amounts when applied to the product during the refinishing process.

4. On audit, the Sales Tax Bureau held the abrasive materials to be manufacturing supplies subject only to the New York State rate of sales and use tax.

CONCLUSIONS OF LAW

A. That although the use of abrasive materials in its refinishing process is an essential step in the manufacturing of its stainless steel product, and the aluminum oxide may remain present in the finished product in a miniscule amount, these abrasive materials were not purchased for resale as a physical component part of tangible personal property within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law.

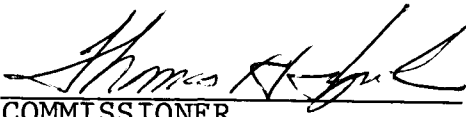
B. That the application of Advance Food Service Equipment, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 31, 1976 is sustained.

DATED: Albany, New York
September 29, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER