

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROCHESTER INDEPENDENT PACKER, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~REGISTERED~~ 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 ~~XXXXX~~ Periods 9/1/67:
to 2/28/71.

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 11th day of March, 1975, she served the within Notice of ~~XXXXXXXX~~ (or Determination) by ~~XXXXXXXX~~ mail upon ROCHESTER INDEPENDENT PACKER, INC. ~~(XXXXXXXXXX)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Rochester Independent Packer, Inc.
11 Independent Street
Rochester, New York 14611 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)~~ ~~(X)~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(XXXXXXXXXX)~~ petitioner.

Sworn to before me this

11th day of March, 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROCHESTER INDEPENDENT PACKER, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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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~~ Periods 9/1/67
to 2/28/71.

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 11th day of March, 1975, she served the within
Notice of ~~PROPOSAL~~ (or Determination) by ~~REGISTERED~~ mail upon SIDNEY J. SALZMAN, ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sidney J. Salzman, Esq.
Salzman, Salzman and Lipson

600 Executive Office Building
36 Main Street West

and by depositing same enclosed in a postpaid properly addressed wrapper in a
Rochester, New York 14614
(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

11th day of March, 1975.

Katherine D. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Saul Heckelman, Acting President
~~MARIO A. PROCCACCINO, PRESIDENT~~
~~XXXXXXXXXXXXXXXXXXXX~~
A. BRUCE MANLEY
MILTON KOERNER

AREA CODE 518

DATED: Albany, New York
March 11, 1975

Rochester Independent Packer, Inc.
11 Independent Street
Rochester, New York 14611

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 decision 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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
ROCHESTER INDEPENDENT PACKER, INC. : DETERMINATION
for a Revision of a Determination or for :
Refund of Sales and Use Taxes under :
Articles 28 & 29 of the Tax Law for the :
Periods 9/1/67 to 2/28/71.

Rochester Independent Packer, Inc. 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 periods September 1, 1967, to February 28, 1971.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York, on March 14, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Salzman, Salzman and Lipson, (Sidney Salzman, Esq. of counsel) and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq. of counsel).

ISSUE

Was the purchase of specially fitted railroad cars used to transport livestock, from Chicago and other depots outside the state, to taxpayer's meat packing plant in Rochester, subject to sales and use tax?

FINDINGS OF FACT

1. The taxpayer, Rochester Independent Packer, Inc., timely filed New York State sales and use tax returns for the periods September 1, 1967, to February 28, 1971.

2. A Notice of Determination of deficiencies in sales tax for the periods September 1, 1967, to February 28, 1971, was issued on August 27, 1971, against the taxpayer under Notice No. 16-0721509.

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

4. The notice dated August 27, 1971, asserted that Rochester Independent Packers, Inc., (hereinafter called "RIPCO") owed additional tax penalty and interest of Thirteen Thousand Twenty-One dollars and ninety-five cents (\$13,021.95) for the period September 1, 1967, through February 28, 1971.

5. The additional sales tax is demanded under the sales and use tax, Article 28 of the Tax Law and is based in large part upon the purchase in the State of Illinois, by RIPCO of railroad rolling stock. The remainder of the tax liability is based on various sundry expenditures, minimal in amount, and RIPCO has abandoned its objections to the imposition of tax upon these small items. The only issue is whether the railroad cars are subject to sales and use tax.

6. RIPCO buys livestock in various markets such as Chicago, St. Louis, Omaha and after a price is negotiated the animal is led

to a weighing scale and after the animal steps off the scale the care, maintenance and protection of the animal are RIPCOS responsibility and RIPCOS has regular employees who assume these duties until the animals can be transported to Rochester. The waiting period for shipment varies with the availability of railroad facilities and the feeding, watering and care of the animals are the responsibility of RIPCOS. Likewise Federal statute dictates minimum standards of care for the animals while in railroad transit. Good maintenance of the animal from time of purchase, through transit, to slaughtering, preserves the weight and quality of the meat.

7. The railroad industry has been unable to provide proper railroad cars for livestock shipments and RIPCOS had custom designed cars with compartments into sections and cushion suspension to protect the animals from bruising by bumping into each other and the car walls. Rough travel may cause loss of weight and deterioration of quality. Bruising results in damage and increases the amount of meat which must be trimmed in dressing.

8. The cars carry the livestock to taxpayer's Rochester packing plant where the animals go into holding pens being maintained and cared for until slaughter.

9. The railroad hauling charges are upon a per car, round-trip basis, and if possible they are returned the same day they are unloaded. The taxpayer has sought the tax exemption in good faith.

OPINION

"Processing" consists of a transformation in form or change for use. In the case of a meat packer, clearly it is the slaughtering, cutting and packing of the meat and meat products, here all done at the Rochester plant, that constitute the processing. Kishman Fish Co. v. Glander, (1945 BTA) 32 Ohio Ops. 360, 40 Ohio L. Abs. 538 17 Ohio Supp. 44, Annotation 30 ALR 2d 1445; see State v. Southern Saw Service (Ala.) cited and digested 30 ALR 2d 1453. The interstate transportation of livestock is not part of the slaughtering, butchering or meat packing in the taxpayer's plant.

Since the "processing" within the statutory intendment is limited to activities at the plant, then clearly the vehicles for transporting the beef cattle from outside the State to the plant are not used "directly" in such processing and fall within the general rule that vehicles for transporting raw materials to the plant, (as distinct from conveyances, or by extension vehicles used for conveyance, within the plant) are not exempt equipment. Annotation 30 ALR 2d § 3, 1449; compare American Compressed Steel Corp. v. Peck, 160 Ohio St. 207 digested Later Case Service ALR 2d, 25-31, 776.

Statutory exemptions in a tax law are to be construed strictly P. v. Brooklyn Garden Apts., 283 N.Y. 373, 380; see also Annotation 157 ALR 806).

The legislature must specifically exempt transportation equipment in order for the railroad cars to be tax exempt.

CONCLUSIONS OF LAW

A. The railroad livestock cars of RIPCO the taxpayer, are equipment used solely for transportation and not machinery or equipment for manufacturing or processing. The railroad cars do not form a part of the manufacturing or processing operation and they are not an integral part of the factory or plant of the taxpayer.

B. The taxpayer's railroad cars were not equipment directly used in the meat packing activities proper which here constitutes the "processing" meant, and they were properly subjected to the tax. The railroad cars are not exempt from the sales and use tax under section 115(a)(12) of the Tax Law or any other section of the Tax Law.

C. The penalties are cancelled.

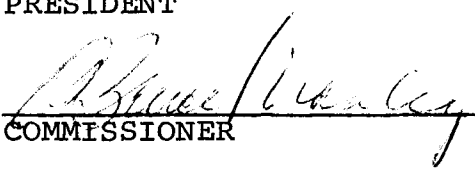
D. The assessments in sales tax against the taxpayer are sustained.

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

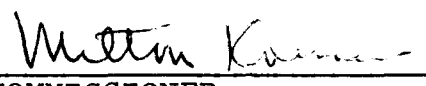
DATED: Albany, New York
March 11, 1975

STATE TAX COMMISSION

PRESIDENT



COMMISSIONER



COMMISSIONER