

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

PLEASANT VALLEY PACKING CO.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~CERTIFIED~~ 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~~ Period
August 1, 1965 through August 31, 1972.

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 28th day of October, 1975, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Pleasant Valley
Packing Co., c/o Robert L. Rosenthal, Secretary
(~~representative of the~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Pleasant Valley Packing Co.
c/o Robert L. Rosenthal, Secretary
310 Wayto Road
Schenectady, New York 12301
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

28th day of October, 1975.

Mary Troff

(Signature)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PLEASANT VALLEY PACKING CO.

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For a Redetermination of a Deficiency or
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Tax Law for the ~~XXXXXX~~ Period
August 1, 1965 through August 31, 1972.

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 28th day of October , 1975 , she served the within
Notice of ~~Determination~~ (or Determination) by (~~certified~~) mail upon Joseph Strum, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph Strum, Esq.

60 East 42nd Street
New York, New York 10017

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

28th day of October , 1975.

Mary Hoff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Decision~~ Application

of

PLEASANT VALLEY PACKING CO.

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

For a Redetermination of a Deficiency or
a Refund of Sales and Use Taxes
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~XXXXXX~~ Period
August 1, 1965 through August 31, 1972.

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 28th day of October , 1975 , she served the within
Notice of ~~Decision~~ (or Determination) by ~~(CERTIFIED)~~ mail upon John J. Flax, CPA

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John J. Flax, CPA
P.O. Box 5369
Albany, New York 12205

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

28th day of October , 1975

Mary Luff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO
Mr. Wright
Mr. Coburn
Mr. Leisner
(518) 457-3336

DATED: Albany, New York
October 26, 1975

Pleasant Valley Packing Co.
c/o Robert L. Rosenthal, Secretary
310 Wayte Road
Schenectady, New York 12301

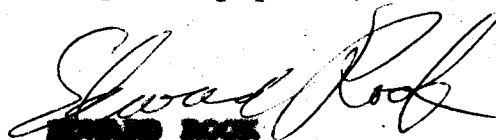
Dear Mr. Rosenthal:

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

Please take further notice that pursuant to
Section(s) **1138 and 1143** 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.

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,


EDWARD ROCK

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
PLEASANT VALLEY PACKING CO.	:	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 August 1, 1965	:	
through August 31, 1972.	:	

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 August 31, 1972.

A formal hearing was held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on October 16, 1974, before the Honorable Edward Rook. The taxpayer was represented by Robert L. Rosenthal, Secretary; Joseph Strum, Esq. and John J. Flax, C.P.A. and the Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq., of counsel.

ISSUES

I. The first issue in this case is whether inedible sausage casings which are removed from skinless frankfurters before leaving the taxpayer's factory are subject to a sales and use tax.

II. The second issue is whether the taxpayer is liable for penalties and interest in addition to the tax for the period in issue.

FINDINGS OF FACT

1. The petitioner company, Pleasant Valley Packing Co., has never been registered with New York State for sales or use tax purposes.

2. A Notice of Determination of sales and use taxes and penalties for the period August 1, 1965 through August 31, 1972, was issued on March 9, 1973, against the taxpayer under Notice No. 90,750,122. After a review of the initial assessment, the Determination was subsequently reduced to the figure which is the basic tax due on frankfurter casings which are the subject of this petition.

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

4. The employer makes skinless frankfurters. The frankfurters are formed in inedible sausage casings which are removed from the frankfurters before they leave the taxpayer's plant.

5. The taxpayer contends that since 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 also contends that since an estimated forty percent of the frankfurters sold during the years in question were sold to tax exempt organizations, the sausage casings used in such frankfurters' production should also be tax exempt. Petitioner has offered no documentary evidence to support this contention.

7. Applicant cooperated fully with the examiner at every stage of the examination and furnished him with all information requested. There was no intent on the applicant's part to evade taxes.

CONCLUSIONS OF LAW

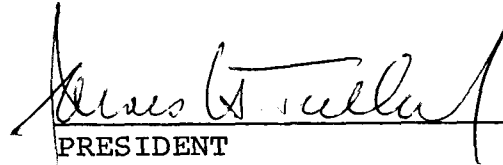
A. The sausage casings themselves are not part of the finished product, do not leave the plant as a finished product, and are not resold. They are taxable under the sales and use tax. The portion of the sausage casings used in the production of frankfurters sold to tax exempt organizations would be exempt, but the taxpayer has failed to substantiate this contention. Here under all the evidence, all the sausage casings are taxable. The taxpayer acted in good faith and no penalty should be imposed.

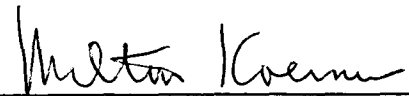
B. The taxpayer's application is denied and the assessment of sales tax is sustained, except that the penalty is cancelled.

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

DATED: Albany, New York
October 28, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER