

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MILLIGAN and HIGGINS, 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) :  
August 1, 1965 through August 31, 1967.

State of New York  
County of Albany

Catherine Steele, 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 17th day of September, 1976, she served the within Notice of Determination by (~~certified~~) mail upon Milligan and Higgins, Inc. (~~representative of the~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Milligan and Higgins, Inc.  
Maple Avenue  
Johnstown, 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 (~~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

17th day of September, 1976

Janet Mack

Catherine Steele

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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MILLIGAN and HIGGINS, INC.

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

Catherine Steele, 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 17th day of September, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon Jeremiah F. Manning, Esq. and Joseph C. Teresi, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jeremiah F. Manning & Joseph C. Teresi, Esqs.  
Ainsworth, Sullivan, Tracy and Knauf  
State Bank Building  
75 State Street  
Albany, New York 12201  
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

17th day of September, 1976

Janet Mack

Catherine Steele



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 17, 1976

TELEPHONE: (518) **457-3850**

Milligan and Higgins, Inc.  
Maple Avenue  
Johnstown, New York

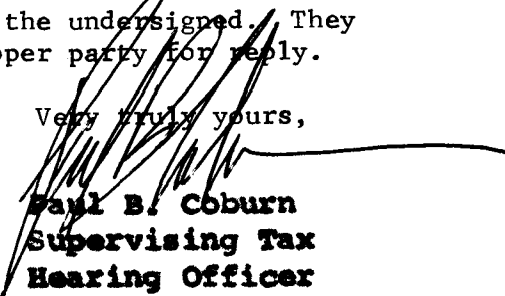
Gentlemen:

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 Application	:	
	:	
of	:	
	:	
MILLIGAN and HIGGINS, 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	:	
August 31, 1967.	:	

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Applicant(s), Milligan and Higgins, Inc., Maple Avenue, Johnstown, New York, 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, 1967.

A formal hearing was held at the offices of the State Tax Commission, Albany, New York, on May 1, 1975, before L. Robert Leisner, Hearing Officer. The taxpayer appeared by Jeremiah F. Manning, Esq. and Joseph C. Teresi. The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether chemicals purchased for the production of glue, being part of the finished product, are exempt from sales and use taxes under section 1101(b)(4)(i) and 1118(4) of the Tax Law.

FINDINGS OF FACT

1. The taxpayer, Milligan and Higgins, Inc., timely filed New York sales and use tax returns for the period August 1, 1965 through August 31, 1967.

2. A Notice of Determination of sales and use taxes (and penalties) for the period August 1, 1965 through August 31, 1967, was issued on January 14, 1969, against Milligan and Higgins, Inc., under Notice No. 90,757,424.

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

4. Milligan and Higgins, Inc., has a plant at Johnstown, New York, which processed in excess of 100,000 pounds of hides a day.

5. The parties have agreed that there is owing \$277.44 for sales tax for the number six fuel and \$381.68 for area lighting not in the manufacturing process. To be resolved are the questions of a rubber lined tank for storage or production, and whether purchases of certain chemicals are exempt from sales tax.

6. Involved are purchases of lime, sodium hydroxide, sulfuric acid, hydrochloric acid, phosphoric acid and magnesium oxide.

7. Hides are taken into the lime house, then by crane to the cook room, where the glue is extracted by hydrolysis in open cooking tubs. The glue is then transferred to an evaporator room and then to an automatic drier. It is then broken and processed into granular form and blended to customer specifications and finally shipped in multiwall bags. The chemical processes are washing

and liming, where hot pebble lime is mixed with the raw materials and is made into a hot slurry. This material is neutralized by hydrochloric acid. The glue is extracted and the material left is treated with sulfuric acid to produce glue tannage for fertilizers, fleshing grease for soap, and purified fatty acids for cosmetics. By-products account for 20% of gross sales.

8. In another process caustic soda is used to heat and to plump the material, then sulfuric acid is added. Magnesium oxide is also added to soften the hide.

9. In the liming process the lime itself becomes an integral part of the raw material hide and it is not considered a catalyst. The hot pebble lime is used to heat the material chemically.

10. More lime is used in cold weather to maintain the extraction temperature. Sodium hydroxide is also used to generate heat warming the water so that the solutions can penetrate the hide and plump it for eventual glue extraction. It is not a catalyst. Ions contained in the hydrochloric acid become a part of the final product. The same is true of the sulfuric acid, the phosphoric acid and magnesium oxide. The ions become part of the finished product in all instances. The aforementioned chemicals are an integral and necessary part of the manufacturing process of glue and they become an integral and necessary part of the glue. According to expert testimony, without these chemicals, glue could not be manufactured. Furthermore, if these chemicals did not become part of the finished product, it would not be classified as glue.

11. The Sales Tax Bureau did not submit substantial evidence concerning the chemicals in question.

12. The taxpayer did not submit evidence concerning the rubber lined tank.

CONCLUSIONS OF LAW

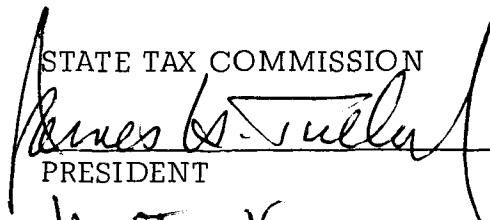
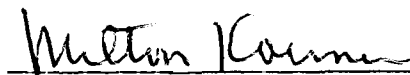
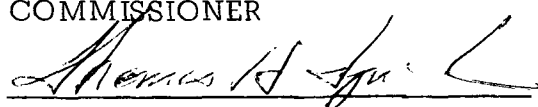
A. That the chemical substances enter into the finished product. Also, some elements of the chemical substances change into other chemical substances and become part of the glue, the fleshing grease and the purified fatty acids. The chemical substances are component parts of a product produced for sale by the purchaser. The use and purchase of the chemicals are exempt from sales and use taxes under sections 1101(b)(4)(i) and 1118(4) of the Tax Law.

B. That the purchase of the rubber lined storage tank is taxable. The number six fuel oil is taxable and the area lighting is taxable as found in paragraph 5 above.

C. That the sales tax shall be recomputed according to paragraph 5 and A and B, above. The sales tax deficiency as modified is sustained.

D. That pursuant to the Tax Law, interest shall be added to the total due until paid.

DATED: Albany, New York  
September 17, 1976

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER