

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

J. MARTINEC PACKING CO.

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) :  
June 1, 1968 to February 28, 1971.

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 4th day of October, 1976, she served the within  
Notice of Determination by ~~(certified)~~ mail upon J. Martinec Packing Co.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: J. Martinec Packing Co.  
419 Sacandaga Road  
Scotia, New York 12302

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)~~  
~~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

4th day of October, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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June 1, 1968 to February 28, 1971.

State of New York  
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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of October, 1976, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Kenneth Gibbons, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Kenneth Gibbons, Esq.  
Gibbons and Burke  
101 Mohawk Avenue  
Scotia, New York 12302  
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

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Catherine Steele

Janet MacP



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

October 4, 1976

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

J. Martinec Packing Co.  
419 Sacandaga Road  
Scotia, New York 12302

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,  
*Frank J. Puccia*  
**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

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	:	
J. MARTINEC 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 June 1, 1968 to February 28, 1971.	:	

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Applicant, J. Martinec Packing Co., 419 Sacandaga Road, Scotia, New York 12302, has 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 June 1, 1968 to February 28, 1971. (Notice No. 90,003,312).

A small claims hearing was held on June 15, 1976, at 9:15 A.M., at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York, before Harry Huebsch, Hearing Officer. The applicant, Joseph Martinec, appeared with his representative, Kenneth Gibbons, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Solomon Sies, Esq. of counsel).

ISSUES

There are three issues to be determined.

I. Are corrugated cartons, purchased in a 4% area and subsequently used in higher taxing jurisdictions, subject to use tax imposed by the higher jurisdictional areas?

II. Is the purchase of sawdust, which is burned in order to create smoke to flavor processed meat, exempt from sales and use tax?

III. Is the purchase of ice, used in the emulsification of processed meat, exempt from sales and use tax?

FINDINGS OF FACT

1. Applicant, J. Martinec Packing Co., is a processor of meat and meat by-products. The plant is located in Schenectady County. The meat products are delivered in refrigerated trucks to retailers in Schenectady and adjoining counties. At the plant, a quantity of meat products are put into cartons which are put into the truck. The driver solicits orders from retailers and takes the meat products from the cartons and delivers them by hand to the retailer. Upon returning to the plant, the cartons are examined to determine if they can be used again. If not, they are discarded.

2. Sawdust is used in the processing of meat products. Damp hardwood sawdust is put in the hopper of a smoke generator and ignited. It smolders and produces smoke which is blown into the smokehouse where the meat products are hung. The meat products absorb the smoke which produces a flavor which greatly adds to the salability of the product.

3. In processed meat products, a 10% water content is allowed by Federal regulation. In some meat products the water is mixed in a brine solution and injected into the meat. Where a meat emulsion is required, ice must be used instead of water. The ice maintains a lower temperature in the meat while it is emulsified by the rapid cutting action of knives. If water is used instead of ice, the knives would heat up and burn the meat causing deterioration of the product. The ice melts in this process and becomes a part of the finished product within the 10% Federal requirement.

CONCLUSIONS OF LAW

A. That the tax is imposed at both state and locality rates under sections 1110 and 1210 of the Tax Law. To the extent that the company engaged in business in locations other than where the plant is located, the applicant, J. Martinec Packing Co., is a vendor for purposes of the local

rates authorized by Article 29. As such, J. Martinec Packing Co. is liable for tax at the locality rate on its use of equipment and supplies in connection with the conducting of such business. The cartons are, therefore, to be taxed at the rate of the locality wherein they are used.

B. That determination of the amount of sales and use tax due on the cartons was correctly ascertained by the Sales Tax Bureau by acceptable audit procedure under section 1142 of the Tax Law.

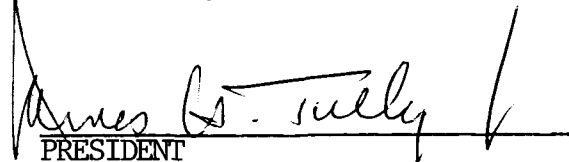
C. That the sawdust was consumed and reduced to ashes and no part of the ashes became a component part of the meat within the meaning and intent of section 1101(b)(4) of the Tax Law. The sawdust is a supply item used in connection with the smoke making machine and as such is specifically denied exemption from tax under section 1115(a)(12) of the Tax Law.

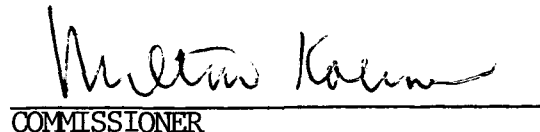
D. That the ice was used to prevent the heating of the knives of the emulsifier machine to the point of burning the meat. The ice is therefore a supply item used in connection with machinery and specifically denied exemption from tax under section 1115(a)(12) of the Sales and Use Tax Law.

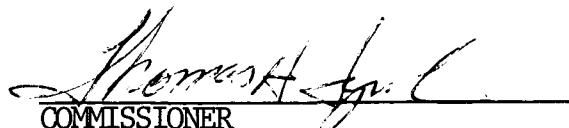
E. That the application of J. Martinec Packing Co. is denied and the Notice of Determination is sustained.

DATED: Albany, New York  
October 4, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER