

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
MAPLECREST SAUSAGE CO., INC.  
ANTHONY ZAMIARA, CHESTER WEAVER and  
GEORGE WEIDER, individually and as officers  
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 ~~XXXXXX~~ Period(s)  
March 1, 1972 to February 28, 1975.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

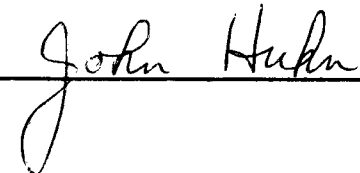
John Huhn, being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 5th day of April, 1978, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Anthony Zamiaara, Chester  
Weaver & George Weider ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Maplecrest Sausage Co., Inc.  
Anthony Zamiaara, Chester Weaver &  
George Weider, Individually & as Officers  
714 Ridge Road West  
Rochester, New York 14615  
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)~~  
~~XXXXXX~~ 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

5th day of April, 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

MAPLECREST SAUSAGE CO., INC.  
of  
ANTHONY ZAMIARA, CHESTER WEAVER and  
GEORGE WEIDER, individually and as officers  
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 ~~Period(s)~~ Period(s)  
March 1, 1972 to February 28, 1975.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

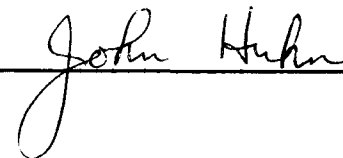
John Huhn, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 5th day of April, 1978, he served the within  
Notice of Determination by ~~(certified)~~ mail upon Edmund Viele  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Edmund Viele, CPA  
Goldstein and Viele  
One East Main Street  
Rochester, New York 14614  
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

5th day of April, 1978.







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

**April 5, 1978**

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

**Maplecrest Sausage Co., Inc.  
Anthony Zaniara, Chester Weaver &  
George Weider, Individually & as Officers  
714 Ridge Road West  
Rochester, New York 14615**

**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,

**Aloysius J. Mendonza  
Assistant Director**

cc: Petitioner's Representative  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
MAPLECREST SAUSAGE CO., INC.	:	
ANTHONY ZAMIARA, CHESTER WEAVER	:	
and GEORGE WEIDER, individually	:	DETERMINATION
and as officers	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for the	:	
Periods March 1, 1972 to February 28, 1975.	:	

---

Applicants, Maplecrest Sausage Co., Inc., Anthony Zamiara, Chester Weaver and George Weider, individually and as officers, 714 Ridge Road West, Rochester, New York 14615, 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 periods March 1, 1972 to February 28, 1975. (File No. 10536-A).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on November 16, 1976 at 9:15 A.M. Applicant, Maplecrest Sausage Co., Inc., appeared by Edward Viele, CPA. Applicants, Anthony Zamiara and George Weider, appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUES

- I. Whether the assessment against applicants was timely.
- II. Whether sales and use tax was due for casings used in the manufacture of products by applicant.
- III. Whether a truck used to haul meat to applicant, Maplecrest Sausage Co., Inc's plant was subject to New York sales and use tax.
- IV. Whether cardboard cartons in which applicant shipped its processed foodstuffs to customers were subject to New York sales and use tax.

FINDINGS OF FACT

1. On December 18, 1975, as the result of an audit of the records of applicant, Maplecrest Sausage Co., Inc., the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the periods March 1, 1972 to February 28, 1975 in the amount of \$27,086.48, plus penalty and interest of \$10,453.06, for a total of \$37,539.54. Applicant paid \$2,000.00. Therefore, the balance due was \$35,539.54.

2. On May 16, 1975, applicant, Maplecrest Sausage Co., Inc., signed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law for the taxable periods March 1, 1972 through May 31, 1972, a determination to be made at any time on or before September 20, 1975. On September 4, 1975, applicant, Maplecrest Sausage Co., Inc., signed another Consent Extending Period of Limitation for

Assessment of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law for the taxable periods March 1, 1972 through August 31, 1972, a determination to be made at any time on or before December 20, 1975. The date of the notice of determination was December 18, 1975.

3. On November 14, 1975, applicant, Maplecrest Sausage Co., Inc., filed a request for a hearing, which was received by the Sales Tax Bureau on November 19, 1975.

4. During the period in issue, applicant, Maplecrest Sausage Co., Inc., manufactured hot dogs and sausages. Hot dogs were processed in celluloid casings which were removed after the product was formed and before sale. Natural or artificial casings are not removed from either sausage or knockwurst. The customer purchases these products with the casing. All these products cannot be formed by the applicant without casings. Swift and Co. has designed and uses an expensive machine that processes such products without casings. Total purchases of casings received from Winnie Pack, Inc. and Union Carbide amounted to \$104,626.00. Ten percent of these casings were used for knockwurst, which remained on the product upon sale to customers.

5. During the period in issue, applicant, Maplecrest Sausage Co., Inc., packed their hot dogs and sausages sealed in plastic containers, into cardboard cartons which were then shipped to their wholesale customers. These "mother" cartons did not return to applicant's plant and were disposed of by customers. Applicant

did not bill customers for said cartons, and their cost was absorbed by applicant. They did not reach the ultimate retail consumer.

6. During the period in issue, applicant, Maplecrest Sausage Co., Inc., leased a truck from J & L Leasing. Operator of the truck is one Dale Unick. He trucked meat from points in the West to applicant's premises, and he was paid on a tonnage basis. Dale Unick paid for the registration fees in Ohio, where he resided, and in New York. He trucked only for the applicant, who reimbursed him for all expenses. Applicant's books showed that Dale Unick received a base salary of \$20,000.00 a year, plus \$500.00 for vacation. The balance owed him, dependent on total tonnage, was considered a lease on the books of applicant and was paid to J & L Leasing. A copy of an old lease was carried in the truck's glove compartment. J & L Leasing Co. was started by another driver whom Dale Unick bought out. When the price of gasoline increased, applicant increased the tonnage payment to Dale Unick from 2½ cents a pound to 3 cents. The term of the lease, dated March 19, 1973, was for an indefinite period and could be terminated by either party on a written thirty-day notice. Dale Unick paid \$55,000.00 for the vehicle and generally was responsible for its upkeep. I.C.C. rights were not involved, due to the lease arrangement, and the Teamster Union was satisfied with the arrangement.

7. Applicants did not contest the assessment resulting from the promotional sale of their products and soda at various shopping centers.

8. Applicants, Maplecrest Sausage Co., Inc., Anthony Zamiara and George Weider, failed to submit documentary or other sufficient evidence to disprove the Sales Tax Bureau's computation of sales tax due on expense purchases, capital purchases and utilities.

9. Applicant, Maplecrest Sausage Co., Inc., cooperated with the Sales Tax Bureau and had the advice of a certified public accountant, who advised them on tax matters.

#### CONCLUSIONS OF LAW

A. That the assessment by the Sales Tax Bureau upon the applicants, Maplecrest Sausage Co., Inc., Anthony Zamiara, Chester Weaver and George Weider, was timely, pursuant to section 1147 of the Tax Law.

B. That the sale during the period in issue, by applicant, Maplecrest Sausage Co., Inc., of its knockwurst with casings to wholesale customers was for resale of tangible personal property and was not subject to sales tax according to the meaning and intent of section 1101(b)(4) of the Tax Law. However, casings used in the processing, and removed prior to sale, constituted a supply-item subject to sales tax according to the meaning and intent of section 1105(a) and 1210 of the Tax Law.

C. That during the period in issue, the transaction wherein applicant, Maplecrest Sausage Co., Inc., leased a vehicle



to have meat from western sources brought to their plant was subject to sales tax within the meaning and intent of section 1105(a) of the Tax Law.


D. That during the period in issue, the sale by applicant, Maplecrest Sausage Co., Inc., of their processed products in cardboard containers constituted a retail sale subject to sales tax of said containers to their wholesale customers in accordance with the meaning and intent of section 1105(a) of the Tax Law.


E. That the application of Maplecrest Sausage Co., Inc., Anthony Zamiara, Chester Weaver and George Weider, individually and as officers, is granted to the extent that interest, in excess of the minimum interest, and the penalty imposed pursuant to section 1145(a) of the Tax Law is cancelled and further to the extent of crediting 10% of the casings which were used for knockwurst as being exempt from the imposition of sales tax; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 18, 1975; and, that except as so granted, the application is in all other respects denied.

DATED: Albany, New York  
April 5, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER