

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

A.T. REYNOLDS and SONS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~Year(s) or~~ Period(s) :
September 1, 1969 through August 31, 1972.

State of New York
County of Albany

John Huhn , 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 14th day of February , 1979 , she served the within
Notice of Determination by ~~(certified)~~ mail upon A.T. Reynolds and Sons, Inc.

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

A.T. Reynolds and Sons, Inc.
Kiamesha Lake, New York 12751

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)~~
~~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

14th day of February , 1979.

Paulyn J. Rapineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or :
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of Sales and Use :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the ~~years~~ ~~xxx~~ Period ~~(s)~~ :
September 1, 1969 through August 31, 1972.

State of New York
County of Albany

John Huhn , 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 14th day of February , 1979 , she served the within
Notice of Determination by ~~(omitted)~~ mail upon Norman Bachrach, Accountant

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Norman Bachrach, Accountant
Weiss & Bachrach
P.O. Box 271, Rialto Building
Monticello, New York 12701

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

14th day of February , 1979

Maureen J. Papineau

John Huhn



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

February 14, 1979

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

A.T. Reynolds and Sons, Inc.
Kiamesha Lake, New York 12751

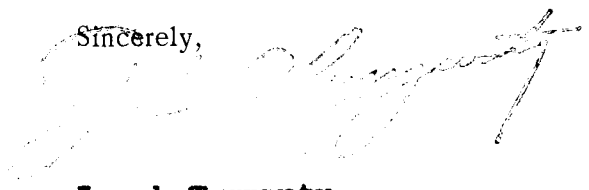
Gentlemen:

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 and 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,



Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
A.T. REYNOLDS and SONS, INC. : 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 September 1, :
1969 through August 31, 1972. :

Applicant, A.T. Reynolds and Sons, Inc., Kiamesha Lake, New York 12751, 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 September 1, 1969 through August 31, 1972 (File No. 10291).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 15, 1977. Applicant appeared by Norman Bachrach, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether the sale of ice to a food processor is subject to New York State sales tax.

II. Whether applicant is relieved of its liability on having accepted in good faith, a completed exempt use certificate from its customer.

FINDINGS OF FACT

1. Applicant, A.T. Reynolds and Sons, Inc., filed New York state and local sales and use tax returns for the period September 1, 1969 through August 31, 1972.

2. On October 31, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, A.T. Reynolds and Sons, Inc., for the period September 1, 1969 through August 31, 1972 in the sum of \$19,607.83, consisting of additional tax due of \$15,119.28, plus penalty and interest of \$4,488.55. Said Notice was issued to correct a prior Notice issued on October 19, 1973, which contained a mathematical error. The above Notice was issued as the result of a field audit of applicant's books and records.

3. On audit, the Sales Tax Bureau examined non-taxable sales for March of 1972 and determined that applicant did not have exemption certificates for sales to five customers. This examination resulted in a 57.1% disallowance of reported non-taxable sales for the audit period and additional sales tax due in the sum of \$15,119.28. At an informal conference with representatives of the Sales Tax Bureau, applicant presented exemption certificates from the five customers. The Sales Tax Bureau conceded that four of the certificates were acceptable and reduced the percentage of disallowed non-taxable

sales to 44.7% reflecting a tax due of \$7,584.01. The one certificate which the Sales Tax Bureau did not accept was received from Manor Poultry Corp.

4. Applicant, A.T. Reynolds and Sons, Inc., was in the business of producing and selling ice both at wholesale and at retail. Applicant accepted an Exempt Use Certificate from Manor Poultry Corp. The certificate had paragraph (c) checked and a note on the certificate stated that vendors were to recognize the exemption covered by paragraph (c) only for the purpose of any sales tax imposed by a county or city other than New York City and that even though paragraph (c) was checked, the vendor was required to collect the statewide sales tax and the New York City sales tax on sales or deliveries into said City.

5. The Sales Tax Bureau then asserted that the sales made to Manor Poultry Corp. were taxable at the statewide rate; accordingly, it modified the projected tax due.

6. During the period in issue, applicant made sales of ice to Manor Poultry Corp. in the sum of \$50,765.75. The ice purchased by Manor Poultry Corp. was used for chilling poultry immediately after the slaughtering and cleaning steps in the processing of poultry for sale. None of the ice purchased from A.T. Reynolds and Sons, Inc. was used in the packaging of

poultry. At the end of the chilling process, all of the ice was in a melted state and the resultant water was disposed of.

CONCLUSIONS OF LAW

A. That ice used for chilling poultry immediately after the slaughtering and cleaning steps, in the processing of poultry for sale, does not qualify for exemption as "refrigeration" used or consumed directly and exclusively in the production of tangible personal property for sale, within the meaning and intent of section 1115(c) of the Tax Law. Therefore, the sale of ice to a food processor is subject to New York State sales tax pursuant to section 1105(a) of the Tax Law.

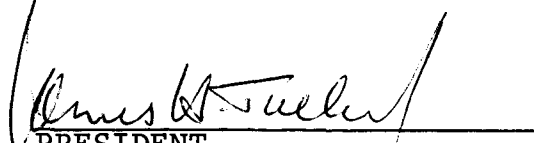
B. That applicant, A.T. Reynolds and Sons, Inc., accepted in good faith, a properly completed exempt use certificate from Manor Poultry Corp.; however, said certificate clearly stated that the statewide sales tax was to be collected on such sales, even though the exemption was to be recognized for the purpose of any sales tax imposed by a county or city other than New York City. That applicant, A.T. Reynolds and Sons, Inc., failed to charge and collect the sales tax imposed under section 1105(a) of the Tax Law from Manor Poultry Corp. in the sum of \$1,888.48, and is, therefore, liable for this tax.

C. That applicant, A.T. Reynolds and Sons, Inc., acted in good faith; therefore, the penalty and interest in excess of the minimum statutory rate are hereby cancelled.

D. That the application of A.T. Reynolds and Sons, Inc. is granted to the extent of reducing additional sales tax due, for the period September 1, 1969 through August 31, 1972 from \$15,119.28 to \$1,888.48 and to the extent that it complies with Conclusion of Law "C", above; 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 October 31, 1973 but that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER