

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Twin Mfg. Co., Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Sales & Use Tax :

under Article 28 & 29 of the Tax Law

for the Period 9/23/75. :

State of New York

County of Albany

Jay Vredenburg, 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 7th day of September, 1979, he served the within notice of Determination by mail upon Twin Mfg. Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Twin Mfg. Co., Inc.
460-464 Suffolk Ave.
Brentwood, NY 11717

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this

7th day of September, 1979.

Mary L. Dinnin

Jay F. Vredenburg

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 7, 1979

Twin Mfg. Co., Inc.
460-464 Suffolk Ave.
Brentwood, NY 11717

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) 1139 & 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,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
TWIN MANUFACTURING CO., 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 December 1, 1973 through	:	
July 1, 1975.	:	

Applicant, Twin Manufacturing Co., Inc., 460-464 Suffolk Avenue, Brentwood, New York 11717, 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 December 1, 1973 through July 1, 1975 (File No. 16394).

Applicant and the Sales Tax Bureau entered into a Stipulation of Facts on June 26, 1978 and agreed to waive a small claims hearing in this matter.

After due consideration, the State Tax Commission makes the following determination.

ISSUE

Whether applicant is entitled to a credit or refund for sales tax paid on gas and electricity used in the production of tangible personal property for sale.

FINDINGS OF FACT

1. On September 23, 1975, applicant, Twin Manufacturing Co., Inc., filed an Application for Credit or Refund of State and Local Sales or Use Tax (ST-137) for the period December 1, 1973 through July 1, 1975, in the amount of \$515.29. Applicant claimed a refund of the total amount of sales tax paid to Long Island Lighting Co. for the purchase of gas and electricity.

2. Applicant is engaged in the manufacture of clothing.

3. On August 3, 1976, the Sales Tax Bureau denied the refund claim in full, on the grounds that applicant failed to submit information requested by the Sales Tax Bureau regarding the taxable use of electricity and gas.

4. On February 26, 1976, Baywood Electric Co., an electrical contractor, estimated that the non-taxable use of electricity by applicant was approximately \$21.00 per day. This estimate, however, was conducted when applicant had 90 electrical motors in operation. Applicant initially started operations with 40 motors. Therefore, the daily usage of electricity during the period of the refund claim varied with the number of motors in operation.

5. During the period at issue, applicant used 60% of the electricity directly and exclusively in the production of tangible personal property for sale.

6. Applicant failed to support its claim with respect to the use of gas in its production.

CONCLUSIONS OF LAW

A. That 60% of applicant's purchases of electricity for the period at issue were exempt from tax by virtue of section 1115(c) of the Tax Law; therefore, applicant is entitled to a refund of tax paid on that portion of the electricity purchased.

B. That the Sales Tax Bureau properly denied applicant's claim for refund with respect to applicant's purchases of gas, in accordance with section 1132(c) of the Tax Law.

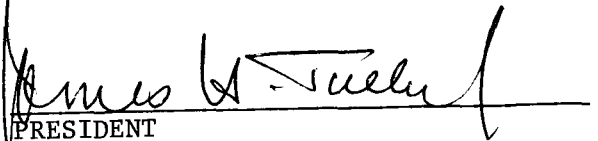
C. That the application of Twin Manufacturing Co., Inc. is granted to the extent indicated in Conclusion of Law "A"; that the Sales Tax Bureau is hereby


directed to compute the amount of refund granted and to refund same, together with such interest as may be lawfully owing; and that, except as so granted, the application is in all other respects denied.

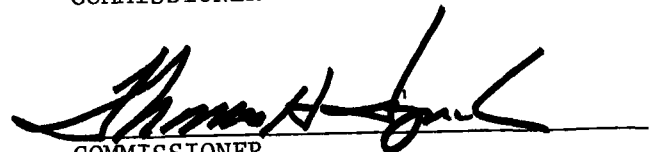
DATED: Albany, New York

SEP 7 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER