

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALL-O-MATIC MFG. CORP.

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 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
June 1, 1968 through May 31, 1971.

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 25th day of August , 1978 , she served the within
Notice of Determination by ~~(certified)~~ mail upon All-O-Matic Mfg. Corp.


~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: All-O-Matic Mfg. Corp.
2099 Jericho Turnpike
New Hyde Park, New York 11040

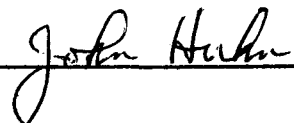
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~XXXX~~ 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

25th day of August , 19 78





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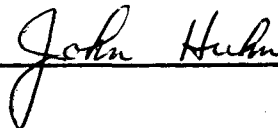
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 1978, he served the within
Notice of Determination by ~~(certified)~~ mail upon Bernard Mintz
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bernard Mintz, CPA
Kalish, Rubinroit & Co.
50 Broadway
New York, New York 10004
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

25th day of August , 19 78







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

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

August 25, 1978

**All-O-Matic Mfg. Corp.
2099 Jericho Turnpike
New Hyde Park, New York 11040**

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,

**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALL-O-MATIC MFG. CORP.	:	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 through May 31,	:	
1971.	:	

Applicant, All-O-Matic Mfg. Corp., 2099 Jericho Turnpike, New Hyde Park, New York 10040, 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 through May 31, 1971 (File No. 10018).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 30, 1977 at 1:15 P.M. Applicant appeared by Bernard Mintz, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether descaling and burnishing chemicals used by applicant in the production of steel clutch plates were taxable purchases of production supplies or whether these were purchases for resale as a physical component part of the steel clutch plates.

FINDINGS OF FACT

1. Applicant, All-O-Matic Mfg. Corp., timely filed New York State sales and use tax returns for the period June 1, 1968 through May 31, 1971.

2. On January 23, 1973 as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$6,262.65, plus penalty and interest. The applicant paid a portion of the assessment and is contesting only \$2,060.70, which amount represents tax due on the purchases of descaling and burnishing chemicals. The Sales Tax Bureau contended that the descaling and burnishing chemicals used to create a desired surface finish on the steel clutch plates constituted taxable purchases of supplies and that said chemicals did not become a physical component part of the clutch plates.

3. In applicant's manufacturing process, it uses descaling chemicals (acids) to treat the surface of automatic transmission clutch plates. This is done by mixing the chemical with water and placing the mixture in a tumbling barrel. The purpose of this process is to remove carbon deposits from the clutch plates and prepare the plate surfaces for a finish. Upon completion of this process, only a minute portion of the chemical remains on the surface and in the pores of the clutch plate. The portion which does not remain is not reusable.

4. After the descaling process, the burnishing process begins. In this process a burnishing chemical (alkaline base) is mixed with water and placed in a tumbler with granite stones and the clutch plates. This process results in a cleansed and polished surface finish. During this process the burnishing chemical is completely used up and decomposed, leaving only a minute portion of the chemical on the surface and in the pores of the clutch plate. Applicant stated that the effect of this process was to produce a wax-like coating on the surface of the steel plates.

CONCLUSIONS OF LAW

A. That the purchases of descaling and burnishing chemicals used in applicant's manufacturing process are retail sales in accordance with section 1101(b)(4) of the Tax Law; therefore, said purchases are subject to the imposition of sales tax pursuant to section 1105(a) of the Tax Law. Although a minute portion of the descaling

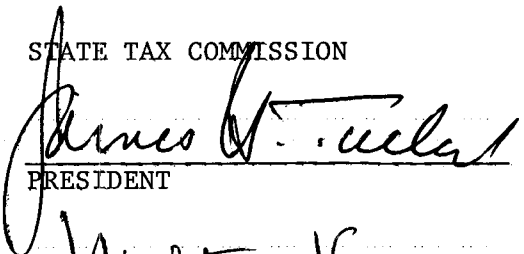
and burnishing chemicals may remain on the surface and in the pores of the clutch plate, this result is not the intention of the process. The adherence of these chemicals is not essential in the manufacturing of a completed clutch plate.

B. That the application of All-O-Matic Mfg. Corp. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 23, 1973 is sustained.

DATED: Albany, New York

August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER