

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cohoes Fabrics Printers, Inc. :
Peter D. Wick : 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 9/1/73 - 5/31/76. :

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 23rd day of May, 1980, he served the within notice of Determination by mail upon Cohoes Fabrics Printers, Inc., Peter D. Wick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cohoes Fabrics Printers, Inc.
Peter D. Wick
100 N. Mohawk St.
Cohoes, NY 12047

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cohoes Fabrics Printers, Inc. :
Peter D. Wick : AFFIDAVIT OF MAILING
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of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 9/1/73 - 5/31/76. :

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 23rd day of May, 1980, he served the within notice of Determination by mail upon Peter D. Wick the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Peter D. Wick
100 N. Mohawk St.
Cohoes, NY 12047

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
23rd day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 23, 1980

Cohoes Fabrics Printers, Inc.
Peter D. Wick
100 N. Mohawk St.
Cohoes, NY 12047

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Peter D. Wick
100 N. Mohawk St.
Cohoes, NY 12047
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

COHOES FABRICS PRINTERS, 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, :
1973 through May 31, 1976.

Applicant, Cohoes Fabrics Printers, Inc., 100 North Mohawk Street, Cohoes, New York 12047, 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, 1973 through May 31, 1976 (File No. 17157).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on August 21, 1979, at 10:45 A.M. Applicant appeared by its president, Peter D. Wick. The Audit Division appeared by Peter Crotty, Esq. (Barry Bresler, Esq. of counsel).

ISSUE

Whether processing paper and soap purchased by applicant for use in its printing process are exempt from the imposition of sales and use taxes.

FINDINGS OF FACT

1. Applicant, Cohoes Fabrics Printers, Inc., is engaged in the printing of designs and patterns on unfinished fabrics for garment manufacturers.
2. On November 15, 1976, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Cohoes Fabrics Printers, Inc., for the period September 1,

1973 through May 31, 1976. The Notice was issued for \$3,562.43, plus penalty and interest of \$1,457.91, for a total of \$5,020.34.

3. The audit, performed by the Audit Division, disclosed that applicant failed to pay a sales or use tax on the purchase of certain recurring expense items, shipping supplies, manufacturing supplies and chemicals. Applicant is contesting the imposition of tax on two specific items. These items are processing paper and soap under the trade name of "detertex" which the auditor determined were subject to the State use tax only.

4. Applicant's process begins with the printing of patterns or designs on unfinished white fabrics furnished by its customer. The fabric is then rolled in "processing paper" and put through a pressure steaming operation where the dyes develop and are fixed into the fabric. The "processing paper" separates the fabrics during this process so that the dyes from one fabric will not damage another.

After the fixation process, the fabric is unrolled from the processing paper and is washed using hot water and soap (detertex) to remove dirt from previous handling of the fabric. This process also washes out surplus dyes and changes the texture of the fabric. A small portion of the soap remains on the fabric.

5. Applicant contended that the processing paper and soap (detertex) are essential to the completeness of the finished product, as much so as dyes and steam which the Audit Division did not subject to tax and, therefore, should also qualify for tax exemption. Applicant further contended that the cost of said items is included in the charge for its printing and, as such, will be taxed when the finished garment is sold to the consumer.

6. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1101(b) (4) (i) defines retail sale as "A sale of tangible personal property to any person for any purpose, other than (A) for resale as

such or as a physical component part of tangible personal property..." (emphasis added).

That section 1118(4) provides an exemption for the "use of property which is converted into or becomes a component part of a product produced for sale by the purchaser" (emphasis added).

That the soap (detertex) was purchased for resale as a physical component part of tangible personal property pursuant to section 1101(b)(4)(i)(A) and became a component part of a product produced for sale pursuant to section 1118(4). That while only a small amount remains in the finished product, the degree of consumption was not made a statutory factor and the ordinary meaning of a "component" is certainly broad enough to include detectable materials contained in a finished whole (Finch, Pruyn & Co., Inc. v. State Tax Commission, 69 A.D. 2d 192, 419 N.Y.S. 2d 232).

B. That the processing paper purchased by applicant is a "supply" within the meaning and intent of section 1115(a)(12) of the Tax Law and, therefore, subject to New York State sales and use tax.

C. That the interest in excess of the minimum statutory rate and the penalty imposed pursuant to section 1145(a) of the Tax Law are waived.

D. That the application of Cohoes Fabrics Printers, Inc. is granted to the extent indicated in Conclusion of Law "A" and "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 15, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

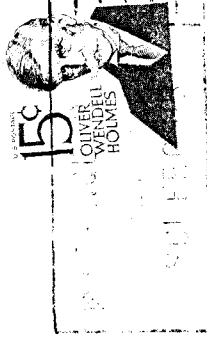

COMMISSIONER

HERZOG, NICHOLS, ENGSTROM & KOPLOVITZ, P. C.

ATTORNEYS AND COUNSELORS AT LAW

OLD SARATOGA SQUARE

SARATOGA SPRINGS, N. Y. 12866



Mr. Paul B. Coburn
Secretary to the State Tax Commission
Department of Taxation and Finance
Building 9
State Campus
Albany, New York 12227

June 3, 1980

Donna E. Wardlaw, Esq.
Herzog, Nichols, Engstrom,
Koplovitz, P. C.
Old Saratoga Square
Saratoga Springs, NY 12866

RE: COHOES FABRICS PRINTERS, INC.

Dear Donna:

Pursuant to your request, I am enclosing a copy of
the State Tax Commission Decision for Cohoes Fabrics
Printers, Inc.

Sincerely,

PAUL B. COBURN
Secretary to the State Tax Commission

PBC:mac

Enc.

CONFIDENTIAL

CONFIDENTIAL
EXCLUDED FROM AUTOMATIC
DOWNGRADING AND
DECLASSIFICATION

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CONFIDENTIAL

HERZOG, NICHOLS, ENGSTROM & KOPLOVITZ, P. C.

ATTORNEYS AND COUNSELORS AT LAW

OLD SARATOGA SQUARE

SARATOGA SPRINGS, N. Y. 12866

518-587-7563

ALBANY OFFICE

11 NORTH PEARL STREET

ALBANY, N. Y. 12207

518-465-7581

JACOB H. HERZOG
EDWARD C. NICHOLS (1910-1976)
CARL W. ENGSTROM
SHOLOM B. KOPLOVITZ
JAMES M. REILLY
HARRY V. B. MILLER
GRACE S. ABOUD
DONALD C. DEWITT
DONNA E. WARDLAW
DAVID I. BACON

GEORGE W. STEDMAN
OF COUNSEL

May 28, 1980

Paul B. Coburn
Secretary to the State Tax Commission
Department of Taxation and Finance
Building 9
State Campus
Albany, New York 12227

RE: Cohoes Fabrics Printers, Inc.

Dear Paul:

Enclosed please find the power of attorney executed by Peter B. Wick as president of Cohoes Fabrics Printers, Inc.

When we last spoke, we discussed the possibility of furnishing additional information on the issue of whether any residues of the soap or paper products used by Cohoes Fabrics Printers, Inc. remain on the printed fabrics after completion of the printing process. After talking with Mr. Wick who represented himself in the small claims hearing, it does not appear that he testified regarding this issue.

Please advise me at your earliest convenience as to whether or not it will be possible to supply additional evidence on these issues.

Sincerely,

HERZOG, NICHOLS, ENGSTROM & KOPLOVITZ, P.C.

Donna E. Wardlaw
Donna E. Wardlaw

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