

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Laribee Wire, 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 12/1/73 - 11/30/76. :

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 18th day of June, 1980, he served the within notice of Determination by mail upon Laribee Wire, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Laribee Wire, Inc.

29 Harden Blvd.

Camden, NY 13316

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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Laribee Wire, 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 12/1/73 - 11/30/76. :

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 18th day of June, 1980, he served the within notice of Determination by mail upon Sheldon Singer 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. Sheldon Singer
Nathan Berkman & Co.
29 Broadway
New York, NY 10006

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
18th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 18, 1980

Laribee Wire, Inc.
29 Harden Blvd.
Camden, NY 13316

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
Sheldon Singer
Nathan Berkman & Co.
29 Broadway
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
LARIBEE WIRE, 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	:	
November 30, 1976.	:	

Applicant, Laribee Wire, Inc., 29 Harden Blvd., Camden, New York 13316, 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 November 30, 1976 (File No. 18620).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 30, 1979 at 10:45 A.M. Applicant appeared by Sheldon Singer, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUE

Whether applicant is liable for sales and use taxes on the purchase of reels and spools which are used to transport wire to its customers.

FINDINGS OF FACT

1. Applicant, Laribee Wire, Inc., is engaged in the manufacture of copper wire.
2. On May 13, 1977, 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 for the period December 1, 1973 through November 30, 1976 for taxes due of \$6,154.17, plus penalty and interest of \$2,579.50, for a total of \$8,733.67.

3. The applicant executed a consent extending the period for assessment of sales and use taxes for the period December 1, 1973 through February 28, 1974 to June 20, 1977.

4. The audit conducted by the Audit Division disclosed that applicant failed to pay a sales or use tax on certain purchases which resulted in a total tax liability of \$13,945.07. On March 25, 1977, applicant signed a consent to fixing of tax whereby applicant agreed to and paid sales and use taxes of \$7,790.90. The unresolved portion of the audit represented taxes asserted on the purchase of reels and spools, safety equipment and a platform scale.

5. The Audit Division stipulated that the safety equipment and the platform scale were exempt from sales and use tax.

6. Applicant purchases reels and spools for transporting wire to its customers. A separate charge or deposit is collected from the customer for the reels. The amount applicant charges for the reels and spools is slightly greater than the original cost. Applicant gives its customers full credit for reels and spools returned in good condition within twelve months from the date of shipment.

7. Prior to July, 1975, applicant credited the charge made to its customers for spools and reels to a reel deposit account. At the end of each year, a portion of this account was recorded as income based on an estimate of reels not expected to be returned. Since July, 1975, applicant recorded the charge made for reels in a sales account. If reels were returned, the accounts receivable were credited or a separate check was issued to the customer.

8. Applicant's customers generally return the reels and spools; however, they are under no legal obligation to do so.

CONCLUSIONS OF LAW

A. That applicant, Larabee Wire, Inc., transferred title and possession of the reels and spools used to transport wire to its customers, thus the charge for said reels and spools constituted a sale within the meaning and intent of section 1101(b) (5) of the Tax Law. Reels and spools purchased by applicant were therefore purchased for resale within the meaning and intent of section 1101(b) (4) of the Tax Law (Nehi Bottling v. Gallman, 39 A.D. 2d 256, Aff'd 34 N.Y. 2d 808).

B. That subsequent to July 1, 1974, the reels and spools purchased by applicant are also exempt from tax under section 1115(a) (19) as packaging materials actually transferred to the purchaser.

C. That the application of Larabee Wire, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 13, 1977 is cancelled.

DATED: Albany, New York

JUN 18 1980

STATE TAX COMMISSION

James W. Tuohy
PRESIDENT

Thomas H. [Signature]
COMMISSIONER

Francis R. Koenig
COMMISSIONER