

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
PLASTOID CORPORATION
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, 1969 through May 31, 1972.

DECISION

Petitioner, Plastoid Corporation, 42-61 24th Street, Long Island City, New York, filed a petition for revision of a determination or refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1969 through May 31, 1972 (File No. 14427).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 6, 1977 at 9:15 A.M. and continued before Solomon Sies, Hearing Officer, at the same offices on February 16, 1978 at 1:15 P.M. Petitioner appeared by Sidney Meyers, Esq. The Audit Division appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

- I. Whether petitioner is liable for sales tax on wire or cable sold where it is shipped to cable companies located in New York State.
- II. Whether petitioner is liable for use tax on its purchase of reels.
- III. Whether the use of a one-month test period on audit was arbitrary and capricious.
- IV. Whether penalty and additional interest should be remitted.

FINDINGS OF FACT

1. Petitioner, Plastoid Corporation, is engaged in the manufacture and

sale of wire and cable to manufacturers in the aircraft, electronic, computer and automotive industries. It also sells wire and cable to cable television companies. Its manufacturing plant is located in Hamburg, New Jersey. It maintains executive offices in Long Island City, New York.

2. Petitioner filed New York State and local sales and use tax returns for the annual periods ending May 31, 1970, 1971 and 1972, in which it stated that it had no taxable sales or services, that none of its purchases were subject to use tax and that "all sales are made from a factory located in Hamburg, New Jersey." Petitioner executed consents extending the time within which to issue an assessment to June 20, 1974 with respect to the period June 1, 1969 through May 31, 1972.

3. On June 10, 1974, 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 petitioner Plastoid Corporation for the period June 1, 1969 through May 31, 1972, in the amount of \$27,316.46, plus penalty and interest of \$12,395.82, for a total of \$39,712.28.

4. On audit, a complete review was made of petitioner's sales for May, 1972. It was determined that 1.518 percent thereof were to New York cable television companies who used the wire or cable for installations of video and sound systems. Therefore, the percentage was projected over sales for the audit period for a determination of unreported taxable sales. In addition, it was determined that 5.25 percent of the sales were made in New York State. This percentage was applied to reel purchases made in the audit period for a determination of purchases subject to use tax.

5. Petitioner made use of the reels it purchased in the packaging of wire

and cable for sale.

6. Petitioner's sales were made pursuant to the shipping terms F.O.B., Hamburg, New Jersey. Orders received in New York were forwarded to the plant manager in New Jersey for acceptance. Shipments were normally made by common carrier.

7. Petitioner's May sales to New York cable companies were greater than the sales made in winter months which prohibit or restrict installations of wire and cable upon poles and underground.

8. Petitioner offered no evidence that Resale Certificates were received by it.

9. Petitioner offered no evidence to substantiate its contention that the reels were returnable, or that a separate charge was made for said reels.

10. Petitioner maintained sufficient books and records for the Audit Division to determine the exact amount of tax due.

11. Petitioner relied on the advice of its accountant that no additional sales or use tax was due.

CONCLUSIONS OF LAW

A. That petitioner's sales of wire and cable destined for cable companies located in New York were taxable retail sales under section 1105(a) of the Tax Law and petitioner is personally liable for the tax required to be collected on said sales in accordance with section 1133(a) of the Tax Law.

B. That petitioner's purchases of reels used to pack wire and cable for sale were exempt from tax as purchases for resale under section 1101(b)(1) of the Tax Law. Petitioner, however, made retail sales subject to tax under section 1105(a) of the Tax Law with respect to reels shipped with wire and

cable to New York customers. (Matter of American Molasses v. McGoldrick, 281 N.Y. 269; Matter of Colgate-Palmolive-Peet v. Joseph, 308 N.Y. 333).

That petitioner is personally liable for the tax required to be collected on said reels in accordance with section 1133(a) of the Tax Law.

C. That the Audit Division's resort to a one-month test was without authority when petitioner maintained adequate records from which the exact amount of tax could have been determined. Therefore, the tax is reduced to the amount found due for the month reviewed which is \$2,152.14 (Matter of Chartair Inc. v. State Tax Commission, 65 A.D.2d 44.)

D. That penalty and interest in excess of the minimum statutory rate are cancelled.

E. That the petition of Plastoid Corporation is granted to the extent indicated in Conclusions of Law "C" and "D" above; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 10, 1974; that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Plastoid Corp.

:

: 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 Years :
1969 - 1972.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Plastoid Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Plastoid Corp.
42-61 24th St.
Long Island City, NY

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
29th day of January, 1982.

Carrie A. Hayland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Plastoid Corp.

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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 Years:
1969 - 1972.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Sidney Meyers the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

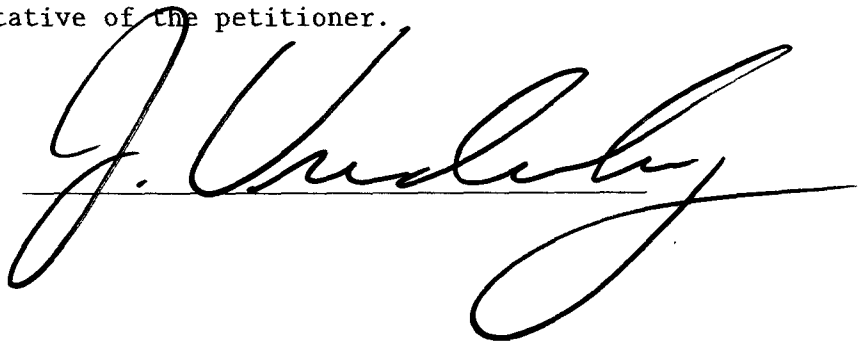
Sidney Meyers
51 Chambers St.
New York, NY 10007

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
29th day of January, 1982.





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

January 29, 1982

Plastoid Corp.
42-61 24th St.
Long Island City, NY

Gentlemen:

Please take notice of the Decision 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
Sidney Meyers
51 Chambers St.
New York, NY 10007
Taxing Bureau's Representative

P 230 842 153
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

PS Form 3800, Apr. 1976

SENT TO		<i>Sidney Meyers</i>	
STREET AND NO.		<i>57 Chambers St</i>	
P.O., STATE AND ZIP CODE		<i>New York, NY 10027</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

P 230 842 050
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

PS Form 3800, Apr. 1976

SENT TO		<i>Placida Corp</i>	
STREET AND NO.		<i>42-61 24th St</i>	
P.O., STATE AND ZIP CODE		<i>Long Island City NY</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			