

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

June 4, 1982

Saratoga Dairy, Inc.
c/o Herbert Boynton
210 Broadway
Saratoga Springs, NY 12866

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) 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

SARATOGA DAIRY, INC. :

DECISION

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 Ending August 31,
1976. :

Petitioner, Saratoga Dairy, Inc., 210 Broadway, Saratoga Springs, New York 12866, filed a petition 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 ending August 31, 1976 (File No. 19789).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 15, 1981 at 10:45 A.M. Petitioner appeared by Herbert Boynton, Vice-President. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether a walk-in cooler was used directly and predominantly by petitioner in the production of yogurt, thereby qualifying said cooler for a manufacturing exemption under section 1115(a)(12) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Saratoga Dairy, Inc., was engaged in the business of manufacturing dairy products, including the production of yogurt.
2. On June 14, 1977, as the result of an audit, the Audit Division issued to petitioner a Notice of Determination and Demand for Payment of Sales and Use

Taxes Due for the period ending August 31, 1976 for taxes due of \$2,105.58, plus penalty and interest of \$463.23, for a total due of \$2,568.81.

3. During the period in question petitioner purchased a walk-in cooler for \$35,093.00. No sales or use tax was paid by petitioner on the purchase price of said cooler. The Audit Division determined that the cooler was taxable on the grounds that it was not used directly and predominantly in the manufacturing process.

4. Yogurt is processed at a temperature of 90 degrees and must, after packaging, be cooled down to and maintained at a temperature of 40 degrees in order to prevent further cultivation. The cooling down process takes approximately 24 hours. The walk-in cooler in question was used to both cool down the yogurt and to store the yogurt until shipped to retail stores for sale. The yogurt remained in the cooler on the average for approximately 7 days from the date of processing. If the yogurt was not maintained at a temperature of 40 degrees or lower it would increase in acidity, resulting in a sour taste and an unsaleable product.

CONCLUSIONS OF LAW

A. That section 1115(a)(12) of the Tax Law provides for an exemption from sales and use taxes for:

"Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property...by manufacturing, processing..."

B. That the walk-in cooler in question was used both for the production of tangible personal property, during the 24-hour cooling down period after the yogurt was processed, and for storage of tangible personal property. Since the cooler was used for storage purposes for a total of 6 days out of the 7 days that the yogurt remained in the cooler, said cooler was not used

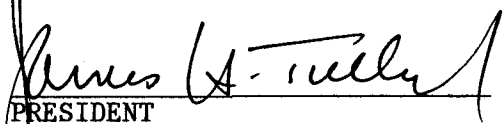
predominantly in the manufacturing process and does not qualify for exemption under section 1115(a)(12) of the Tax Law.

C. That the petition of Saratoga Dairy, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated June 14, 1977 is sustained, together with such additional penalty and interest as may be lawfully due and owing.

DATED: Albany, New York

JUN 04 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Saratoga Dairy, 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 Ending August 31, 1976.

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 4th day of June, 1982, he served the within notice of Decision by certified mail upon Saratoga Dairy, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Saratoga Dairy, Inc.
c/o Herbert Boynton
210 Broadway
Saratoga Springs, NY 12866

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
4th day of June, 1982.

James A. Hays

J. Vredenburg

P 230 840 227
RECEIPT FOR CERTIFIED MAIL

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

SENT TO		<i>Saratoga Dairy Co</i>	
STREET AND NO.		<i>90 Herbert Bayton</i>	
P.O., STATE AND ZIP CODE		<i>110 Broadway</i>	
POSTAGE		<i>Saratoga Springs 124</i>	
CERTIFIED FEE		<i>1.28</i>	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	SPECIAL DELIVERY	<i>c</i>
		RESTRICTED DELIVERY	<i>c</i>
		RETURN RECEIPT SERVICE	<i>c</i>
		SHOW TO WHOM AND DATE DELIVERED	<i>c</i>
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	<i>c</i>
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	<i>c</i>
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	<i>c</i>
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

PS Form 3800, Apr. 1976



New York State Department of
TAXATION and FINANCE

Processing Division
State Campus, Albany, New York 12227

Saratoga Dairy, Inc.

**WAIVER, MODIFICATION, OR CANCELLATION OF PENALTY AND INTEREST
REQUIRING APPROVAL OF THE STATE TAX COMMISSION**

SS # OR ID # 14-1323661		
TAXPAYER'S NAME Saratoga Dairy, Inc.		
STREET ADDRESS R.D. 6, Excelsior Avenue		
CITY Saratoga Springs	STATE NY	ZIP CODE 12866

TAXING APPLICATION:

- ☐ Corporation Tax
☐ Personal Income Tax
☒ Sales Tax
☐ Withholding Tax
☐ Miscellaneous Tax:

ASSESSMENT NO. 90005405
FILING PERIOD 3/1/74 through 2/29/77

INTEREST AND PENALTY ASSESSED \$ 2,002.65
INTEREST PAID \$ 1,476.25
RECOMMENDED CANCELLATION \$ 526.65

In accordance with established policy, approval of the State Tax Commission (*more than one member*) is required where the proposed cancellation of interest and/or penalty is for an amount in excess of \$5,000.00 or for a situation not covered in policy memoranda.

REASON FOR WAIVER, MODIFICATION OR CANCELLATION:

The vendor was assessed tax plus penalty and interest based on an audit of his records for the use tax due on a piece of equipment the vendor thought should qualify for the manufacturers exemption.

This audit was concluded at a time when penalty and interest was assessed on all disagreed audit findings. Though the vendor did not request abatement of penalty during the hearing process, he has now.

Under existing departmental guidelines, penalty was not properly asserted in this situation, and thus I recommend that penalty be waived.

Approval Recommended By:			
NAME <i>Lawrence J. Kelly</i>	TITLE <i>Tax Audit Administrator</i>	DATE <i>9/24/82</i>	
Approval Recommended By:			
NAME <i>[Signature]</i>	TITLE <i>Director DOAB</i>	DATE <i>9/24/82</i>	
Commissioner			
<i>[Signature]</i>	DATE: <i>10/12/82</i>	APPROVED <i>[Signature]</i>	DISAPPROVED _____
Commissioner			
<i>F. Koeng</i>	DATE: <i>10/5/82</i>	APPROVED <i>F.K.L.</i>	DISAPPROVED _____
Commissioner			
<i>[Signature]</i>	DATE: <i>10/4/82</i>	APPROVED <i>[Signature]</i>	DISAPPROVED _____