

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

September 28, 1983

Armstrong World Industries, Inc.
(Formerly Armstrong Cork Company)
ATTN: Donald K. James
Liberty & Charlotte Streets
Lancaster, PA 17604

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 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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ARMSTRONG WORLD INDUSTRIES, INC.	:	DECISION
(Formerly Armstrong Cork Company)	:	
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,	:	
1974 Through May 31, 1978.	:	

Petitioner, Armstrong World Industries, Inc. (formerly Armstrong Cork Company), Liberty and Charlotte Streets, Lancaster, PA 17604, 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 December 1, 1974 through May 31, 1978 (File No. 26970).

A formal hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 29, 1982 at 9:00 A.M., with all briefs to be submitted by January 31, 1983. Petitioner appeared by Donald K. James, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

ISSUES

I. Whether resins used in petitioner's water softening system are exempt from sales and use taxes under section 1115(a)(12) of the Tax Law.

II. Whether equipment used to prevent noise pollution is exempt from sales and use taxes.

III. Whether certain replacement parts for production machinery have a useful life of more than one year.

IV. Whether the difference between the gross amount and the net amount charged on an invoice for electricity represented a late payment penalty or an early payment discount.

FINDINGS OF FACT

1. Petitioner, Armstrong World Industries, Inc. (formerly Armstrong Cork Company), is a Pennsylvania corporation with its principal place of business in Lancaster, Pennsylvania. Petitioner is engaged in manufacturing home, business and commercial products in a series of integrated operations which are conducted in Pennsylvania and elsewhere. Petitioner's activities in New York State consist of sales offices in Buffalo and Garden City and a manufacturing plant in Fulton. The Fulton facility manufactures a sheetboard used as flooring, backing or gasket materials. The plant has three machines similar to those used in the paper manufacturing industry. Petitioner prepares solids (anything ranging from cork, to asbestos to rag fibers) into a slurry with a latex binder, shapes them on a paper machine and forms them into a continuous sheet.

2. On March 27, 1979, 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 Armstrong Cork Company covering the period December 1, 1974 through May 31, 1978 for taxes due of \$104,457.86, plus interest of \$19,643.24, for a total of \$124,101.10.

3. Petitioner executed consents extending the period of limitation for assessment of sales and use taxes for the period December 1, 1974 through February 29, 1976, to December 20, 1979.

4. The audit disclosed sales and use taxes due in the following areas:

a) disallowed nontaxable sales	\$ 5,735.06
b) fixed assets	3,420.20
c) expense purchases	22,929.56
d) inventory relief ¹	15,768.96
e) chemicals	56,604.08

Fixed asset acquisitions were reviewed in detail for the audit period.

The taxes determined due for (c) and (d) above, were estimated based on an examination of purchase invoices for April, 1978. The Audit Division advised petitioner when it started the audit that it intended to use the "test period" method of audit. Petitioner at that time agreed to the use of test periods and also reiterated its agreement at the hearing.

5. The Department of Taxation and Finance, in its answer to the perfected petition, stated that in accordance with the Matter of Finch, Pruyn & Co., Inc. v. State Tax Commission, 69 A.D.2d 192, the portion of the deficiency attributable to chemical purchases was deleted from the notice. The answer further stated that the tax assessed on fixed assets was reduced by \$1,622.34 based on a pre-hearing conference.

6. The taxability of the purchases listed below is at issue herein. The Audit Division did not impose any local taxes on these purchases. Petitioner conceded that tax is due on the purchases not enumerated below as well as the disallowed nontaxable sales.

<u>FIXED ASSETS</u>		<u>INVENTORY RELIEF</u>	
Resin	- \$10,180.00	Stainless steel sheets	\$ 457.00
Vinyl Curtain	- 1,524.00	Power supply card	162.00
		Jordan shell	3,245.00
		Jordan shell & plug	3,922.00

¹ Inventory relief is an account used by petitioner to record purchases of parts and supplies placed in inventory. When the item is requisitioned for use, petitioner determines if sales tax is applicable.

EXPENSES

Unwind reel spools	\$4,102.00
Nycor belts	1,505.94
Red dash pot	315.00
Rotor blade - defibering ring	2,750.00
Cones	1,106.00
Electricity	711.05

7. The resin is an ion exchange resin which softens water by exchanging calcium iron with sodium iron. It is contained in four large steel tanks, each containing approximately 250 cubic feet. In 1975, a welded pipe cleanout connection on one softener tank failed and the internal pressure forced all of the resin out of the tank. The resin purchased during the audit was the replacement for the resin lost in this accident. The water softening system is part of petitioner's manufacturing process. The resins are an integral part of the water softening system and necessary for its operation. These reasons are the basis for petitioner's position that the resins are exempt from tax.

8. The vinyl curtains were installed around machines for the sole purpose of controlling the noise emitted from the machines. Said curtains were installed pursuant to OSHA regulations.

Petitioner argued that equipment preventing noise pollution should be afforded the same exemption given to air and water pollution equipment.

9. Stainless steel sheets become fabricated parts for machinery or equipment, such as splash guard covers. The fabricated parts are not a type that would deteriorate with normal usage. These parts would only be replaced if a machine became obsolete. The stainless steel itself is expected to last indefinitely while the machines to which the fabricated parts are attached have a life expectancy of 10 or more years.

10. A power supply card is an electronic control machine for a DC motor. A review of inventory relief requisitions for the three years preceeding the audit period and two years after showed that no other power supply cards were used over eight years.

11. The Jordan shell and Jordan plug and shell are replacement parts for Jordan machines which are used to cut fibers. Petitioner has 17 Jordan machines in use. Each machine has a shell and plug set. Petitioner analyzed the number of sets replaced in 1975 through 1978. This analysis showed that it replaced an average of five sets per year.

12. A reel spool is part of a paper machine. It winds and unwinds the manufactured product on and off the machine. There are three reel spools on a machine. A reel spool is fifteen feet long, ten inches in diameter and weigh about 3,000 pounds. The purchase in April, 1978 represented five reel spools (3 female connections and two male connections). These were the only reel spools purchased since 1972.

13. Nycor belts are used to drive a section of a paper machine. A paper machine is made up of sections that have to be synchronized with certain speed controls in each section because it is a continuous web that travels from one section to another. Machine number 1 has 8 belts; number 2 has 7; and number 3 has 6.

The purchases at issue are one belt for the number 3 machine and two belts for the number 2 machine. The belts have similar convolution but the width and length of the belt are tailor-made for each individual drive and consequently are not interchangeable. These belts last 3-5 years.

14. A red dash pot is an electrical component used to control the power to a motor. There are three in any given starter, one for each of the phases of the power being fed to the starter. Petitioner purchased three red dash pots to replace in one starter. Typically, a red dash pot has a useful life of 10 years or more.

15. The rotor blade and defibering ring are parts for a pulper. These parts were replaced after the pulper had been in service five years and have not been replaced since then.

16. Cones are parts for a Nash pump. There are fifteen of such pumps in operation. There are two cones located at either end of the machine and are replaced in sets approximately every five years.

17. Petitioner purchased electricity from Niagara Mohawk Power Corporation. The invoice from Niagara Mohawk indicated two amounts, a gross amount payable after the due date and a net amount payable on or before the due date. Petitioner paid a use tax on its electricity usage based on the net amount. It was petitioner's position that the gross amount was a late payment penalty. The Audit Division held petitioner liable for tax on the gross amount on the grounds that the difference between the gross and net amounts represented a discount for early payment.

CONCLUSIONS OF LAW

A. That section 1115(a)(12) of the Tax Law provides 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 for sale, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment.

B. That resins do not constitute machinery or equipment used directly and predominantly in production within the meaning and intent of section 1115(a)(12) of the Tax Law and 20 NYCRR 528.13; nor does the resin become a physical component part of tangible personal property in accordance with section 1101(b)(4)(i)(A) of the Tax Law. That resins are supplies used in connection with production machinery and equipment and therefore are subject to the New York State sales and use tax imposed under sections 1105(a) and 1110 of the Tax Law.

C. That machinery and equipment used to prevent noise pollution are not used directly and predominantly in production within the meaning and intent of section 1115(a)(12) of the Tax Law and 20 NYCRR 528.13. The exemption provided under 20 NYCRR 528.13(d) is strictly limited to waste treatment equipment. That, therefore, the vinyl curtains are subject to tax.

D. That the parts described in Findings of Fact "9" "10" and "11" included in the test of "inventory relief", as well as the parts described in Findings of Fact "12" "13" "14" "15" and "16" purchased directly, have a useful life of more than one year and therefore, are exempt from sales and use taxes pursuant to section 1115(a)(12) of the Tax Law.

E. That Public Service Commission regulations prohibited the imposition of a late payment penalty on utility bills prior to June 1978; accordingly, the difference between the gross amount payable and the net amount payable on the invoice was an early payment discount. Therefore, such amount was a "receipt" as provided in section 1101(b)(3) of the Tax Law.


F. That in accordance with Finding of Fact "5" taxes due of \$58,226.42 are cancelled.

G. That the petition of Armstrong World Industries, Inc. (formerly Armstrong Cork Company) is granted to the extent indicated in Conclusions of Law "D" and "F"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes due issued March 27, 1979; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Armstrong World Industries, Inc. :
(Formerly Armstrong Cork Company) :
:
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 :
12/1/74-5/31/78. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon Armstrong World Industries, Inc., (Formerly Armstrong Cork Company), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Armstrong World Industries, Inc.
(Formerly Armstrong Cork Company)
ATTN: Donald K. James
Liberty & Charlotte Streets
Lancaster, PA 17604

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
28th day of September, 1983.



Susan Powell



Connie Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 481 208 259

RECEIPT FOR CERTIFIED MAIL

INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Armstrong World Industries</u> <u>(formerly Armstrong Cork Company)</u>	
Street and No. <u>1721 Donald R. James</u>	
Liberty & Charlotte Streets	
P.O., State and ZIP Code <u>Lancaster, PA 17604</u>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982