

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TODD SHIPYARDS CORPORATION

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use Taxes :
Taxes under Article(s) 28 and 29 of the :
Tax Law for the Year(s) 1965 - 1967. :

State of New York
County of Albany

Katherine D. Manly, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of January, 1975, she served the within
Notice of ~~Decision~~ ~~xxx~~ Determination) by ~~xxx~~ mail upon Todd Shipyards
Corporation ~~(xxx)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Todd Shipyards Corporation
One State Street Plaza
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~xxx~~
~~xx~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(xxx)~~ petitioner.

Sworn to before me this

30th day of January, 1975.

Janet Mack

Katherine D. Manly

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
TODD SHIPYARDS CORPORATION

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~REGISTERED~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the Year(s) 1965 - 1967.

State of New York
County of Albany

Katherine D. Manly, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of January, 1975, she served the within Notice of ~~Redetermination~~ (Determination) by ~~registered~~ mail upon Robert B. Lisle, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert B. Lisle, Esq.
Cullen and Dykman
177 Montague Street
Brooklyn, New York 11201
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of January, 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
TODD SHIPYARDS CORPORATION

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~CERTIFIED~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the Year(s) 1965 - 1967.

State of New York
County of Albany

Katherine D. Manly, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of January, 1975, she served the within
Notice of ~~Deficiency~~ (or Determination) by ~~registered~~ mail upon Cye E. Ross, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Cye E. Ross, Esq.
Cullen & Dykman
177 Montague Street
Brooklyn, New York 11201
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

30th day of January, 1975.

Janet Mack

Katherine D. Manly



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
January 30, 1975

Todd Shipyards Corporation
One State Street Plaza
New York, New York

Gentlemen:

Please take notice of the **Determination**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1139 and 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **four months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

TODD SHIPYARDS CORPORATION :

DETERMINATION

for a hearing to review a determination :
or for refund of Sales and Use Taxes :
under Articles 28 and 29 of the Tax Law :
for the Period August 1, 1965 through :
May 31, 1967. :

Todd Shipyards Corporation filed an application under section 1139 of the Tax Law for a hearing, to review a denial of a refund of sales and use taxes paid under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through May 31, 1967, in the amount of \$38,711.80.

A hearing was duly held on February 6, 1973 at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The applicant was represented by Robert B. Lisle, Esq. and Cye E. Ross, Esq. of Cullen & Dykman, Esqs. of Brooklyn, New York. The Sales Tax Bureau was represented by Saul Heckelman, Esq. appearing by James A. Scott, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the sale of property or services to a ship repairing business is property "used by or purchased for the use of commercial vessels for fuel, provisions, supplies, maintenance and repairs", or are services with respect

to such commercial vessels within the meaning of that language as used in section 1115(a)(8) and in section 1105(c)(3) of the Tax Law.

It is stipulated that the ships were "commercial vessels primarily engaged in interstate or foreign commerce" within the meaning of sections 1105(c)(3) and 1115(a)(8) of the Tax Law.

FINDINGS OF FACT

1. Todd Shipyards Corporation, the applicant herein, is a New York corporation with its principal office in New York and is engaged in the business of the construction, conversion and repair of ships at shipyards, both in New York State and outside of New York State. Its shipyard in New York is located at the foot of Dwight Street, Brooklyn, New York.

2. Applicant made purchases of personal property and also of certain services in conjunction with its business of repairing ships. Some of these purchases of property and services were in conjunction with the repairing of commercial vessels, primarily engaged in interstate or foreign commerce within the meaning of sections 1105(c)(3) and 1115(a)(8) of the Tax Law. These ships would be left at the shipyards by the owner, for repairs and would be delivered back to the owner at the shipyard after the repairs were done. No exemption is claimed under section 1115(d) of the Tax Law for deliveries outside of the State.

3. The purchases made by Todd were made under a direct pay permit, as provided in section 1132(c) of the Tax Law. Thus, no tax was paid at the time of purchase. The taxes, here in issue, were paid by a return filed by Todd. Some of the property purchased was put in storage and a tax was paid at the time of withdrawal from storage.

4. It is stipulated that the personal property, the tax on which is here in question, was not purchased by applicant for resale to a ship owner, either as such or as a physical component part of other personal property, nor was it used by applicant in performing a service on a vessel, where it became a component part of the vessel, or where it was actually transferred to the shipowner in conjunction with such repair service. It thus was purchased at a retail sale as defined in section 1101(b)(4)

5. The services, here in question were performed for Todd, on Todd's property and were not 'resold' by Todd to a shipowner.

6(a). The personal property, the tax on which is here in issue is of the following character: Office supplies including printed forms, stationary, scissors, a bulletin board used in the general conduct of the business of the shipyard, safety equipment for the workers including goggles and special shoes, maintenance equipment supplies such as cleaning rags and brooms, fire extinguishers, locks and keys, tools including power tools, electrical equipment, including lighting equipment used in the offices.

6(b). The services, the tax on which is here in dispute, include the services of a cement contractor in reinforcing a dry-dock.

CONCLUSIONS OF LAW

The property and services here in dispute do not fall within the provisions of the only exemptions claimed that are found in sections 1115(a)(8) and 1105(c)(3) of the Tax Law. The said property and services are therefore taxable.

The refund here in issue is denied.

DATED: Albany, New York
January 30, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER