

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
UNION CARBIDE CORPORATION :
CARBON PRODUCTS DIVISION and LINDE DIVISION :
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
August 1, 1965 to February 29, 1968.

AFFIDAVIT OF MAILING

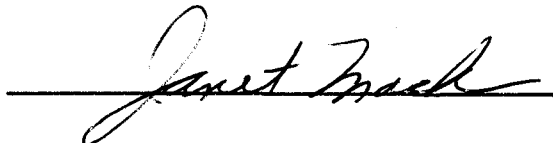
State of New York
County of Albany

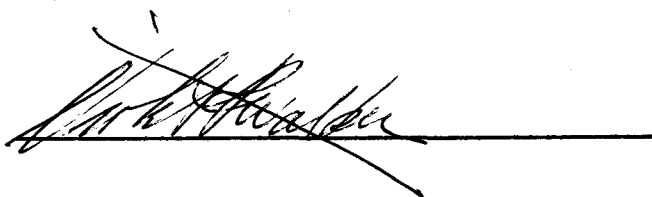
Violet Walker , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of June , 1977, she served the within
Notice of Determination by (~~certified~~) mail upon Union Carbide Corporation
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Union Carbide Corporation
Carbon Products Division
and Linde Division
270 Park Avenue
New York, New York 10017
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

24th day of June , 1977.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

June 24, 1977

TELEPHONE: (518) **457-1723**

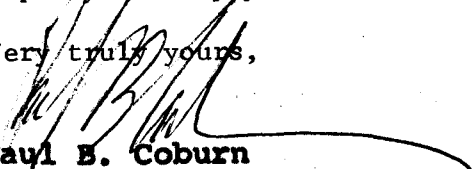
Union Carbide Corporation
Carbon Products Division
and Linde Division
270 Park Avenue
New York, New York 10017

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

Please take further notice that pursuant to
Section(s) **1138 and 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

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. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: ~~Taxing Bureau's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
UNION CARBIDE CORPORATION	:	DETERMINATION
CARBON PRODUCTS DIVISION and LINDE DIVISION	:	
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 August 1, 1965 to February 29,	:	
1968.	:	

Applicant, Union Carbide Corporation, Carbon Products Division, Portage Road, Niagara Falls, New York, and the Linde Division, Tonawanda, New York, filed applications 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 August 1, 1965 to February 29, 1968. (File Nos. 00348 and 00349).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on June 9, 1976 at 10:00 A.M. Applicant appeared by Thomas J. Corcoran, Manager of the Sales and Use Tax Section. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Richard M. Kaufman, Esq., of counsel).

ISSUES

I. Whether the construction of liquid oxygen tanks were capital improvements to realty and, therefore, not subject to New York State sales tax.

II. Whether base load oxygen compressors and certain cryogenic tanks were production equipment, and thus were not subject to New York sales tax.

III. Whether the purchase of refractory bricks for replacement or in building new furnaces was subject to New York sales taxes.

FINDINGS OF FACT

1. On November 19, 1969, as the result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Union Carbide Corporation, Carbon Products Division, in the amount of \$18,853.53, plus penalty and interest of \$6,250.53, for a total of \$25,104.06.

2. On March 10, 1970, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Union Carbide Corporation, Linde Division, in the amount of \$43,738.17, plus penalty and interest of \$17,488.88, for a total of \$61,227.05. A credit of \$12,440.68 reduced the amount due to \$48,786.37.

3. On July 21, 1965, applicant, Union Carbide Corporation, Linde Division, contracted with the Chicago Bridge and Iron Company of 165 Broadway, New York, New York, to design, fabricate, deliver, unload, erect and test on foundations provided at applicant's oxygen plant, located on the property of Bethlehem Steel Company, Lackawanna, New York, one liquid oxygen storage tank. The price was \$148,060.00 which included \$860.00, the 2% New York State tax. The unit is technically referred to as an LR-25 and/or a double wall LO2 sphere. Work was completed in June, 1966, as required. It was permanently affixed to a prepared reinforced concrete foundation on land leased perpetually from its customer, the Bethlehem Steel Company, and the City of Lackawanna. It was described as a cryogenic (spherical) vessel containing 25,000,000 cubic feet, and a 217,500 gallon capacity. The State Board of Equalization and Assessment considered the unit realty and applicant was taxed accordingly.

4. On August 8, 1966, applicant, Union Carbide Corporation, Linde Division, contracted with the Pittsburgh - Des Moines Steel Company, Pittsburgh, Pennsylvania, for the fabrication, delivery, hauling, unloading, erecting and testing of a LR-40, a liquid oxygen storage tank, on foundation provided at applicant's plant located on property of Bethlehem Steel Company, Lackawanna,

New York for \$212,735.00. The Erie County and State tax of 4% amounting to \$3,404.78 was paid by the builder on material valued at \$85,119.44. The LR-40 was permanently affixed to a prepared, reinforced concrete foundation on land perpetually leased from its customer, the Bethlehem Steel Company, and the City of Lackawanna, New York. The sphere has a diameter of 41 feet and a height of 44.65 feet, and a capacity of 347,000 gallons. The State Board of Equalization and Assessment considered the unit realty and applicant was taxed accordingly.

5. Applicant, Union Carbide Corporation, Linde Division, provides its customer, the Bethlehem Steel Company at Lackawanna, New York, with oxygen production facilities. The base load oxygen compressors (BLOC) serve three functions. The first is that the gaseous oxygen product is required by the steel-making process to be at a level between 150 psig (pounds per square inch, gauge) and 190 psig. The second use is also an integral process requirement. When a liquefier is involved, the process requires elevated gaseous oxygen pressure for the conversion to liquid. The third function is an incremental purpose which is to move the product from one place to another. The oxygen pressure determines to an important degree the

relationship of the direct metal-gas reactions to the metal-slag reactions at the area of impact. The primary function of the base load oxygen compressors is to provide gaseous oxygen at a usable pressure level for the manufacture of steel. Less than ten percent of the BLOC discharge pressure is used to move the product through piping and equipment to their use points.

6. Applicant, Union Carbide Corporation, Linde Division, constructed and supplied to its customers cryogenic tanks in sizes varying from the TM 500 with a capacity of 530 gallons, to the TM 11000 with a capacity of 11080 gallons. These units are built according to rigid specifications. The outer container is constructed of high-strength carbon steel. Its seams are welded and are x-rayed to insure meeting code requirements. The area between the inner and outer container is filled with high-quality powder insulation, which is pumped to a high vacuum. Vaporizers (a heat unit) convert the stored liquid which is held at 300 to 320 degrees fahrenheit into gas. Other auxiliary equipment controls the delivery flow and gas pressure, as required by the process. Additional equipment providing precise pressure regulation, as well as emergency back-up and alarm systems, is available on these tanks to suit a variety of special needs. While some customers require conversion of the liquid

to gas, some may desire a choice, and others may desire only the liquid oxygen, argon or nitrogen. Union Carbide Corporation delivers liquid gas to its customers, i.e., liquid oxygen, liquid argon or liquid nitrogen, because of the ease in handling and transportation of those gases. The gas is used directly in various phases of the production and manufacturing processes of steel, electronics and other industries. Applicant honors customer tax exemptions, as manufacturing on the sale or rental of these units.

7. Applicant, Union Carbide Corporation, Carbon Products Division, located in Niagara Falls, purchased refractory brick for the construction of new furnaces which are used to fire carbon at 650 degrees over a two to three week period. Half of the purchased refractory brick was used to reline existing furnaces. The useful life of the brick is between one and a half to three years.

CONCLUSIONS OF LAW

A. That during the period in issue, the construction by the applicant, Union Carbide Corporation, Linde Division, of liquid oxygen tanks, the LR-25 and the LR-40, which added to the value of the real property, became permanently affixed

thereto and was intended to become a permanent installation, was a capital improvement to real property, and , therefore, was not subject to sales tax according to the meaning and intent of section 1105(c)(3) of the Tax Law.

B. That the construction by the applicant, Union Carbide Corporation, Linde Division, of base load oxygen compressors (BLOC) which provide gaseous oxygen for steel-making, thus becoming necessary production equipment used directly and exclusively in the production of personal property, i.e., steel, was exempt from sales and use taxes according to the meaning and intent of section 1115(a)(12) of the Tax Law.

C. That the sale and rental by applicant, Union Carbide Corporation, Linde Division, of cryogenic tanks (TM 500 to TM 1100) which converts various gases necessary to steel-making, thus becoming necessary production equipment used directly and exclusively in the production of personal property, i.e., steel, was exempt from sales and use taxes according to the meaning and intent of section 1115(a)(12) of the Tax Law.

D. That the purchase by the Union Carbide Corporation, Carbon Products Division, of refractory brick for the relining of and use in the construction of furnaces used directly and

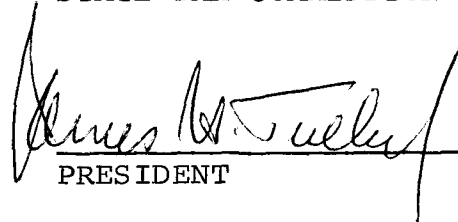
exclusively in the production of personal property, i.e., carbon, was exempt from sales and use taxes according to the meaning and intent of section 1115(a)(12) of the Tax Law.

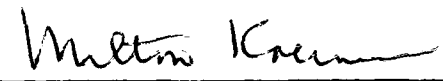
E. That the application of Union Carbide Corporation, Linde Division, is granted, to the extent set forth in paragraphs "A", "B" and "C" and the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 10, 1970.

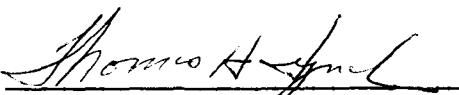
F. That the application of Union Carbide Corporation, Carbon Products Division, is granted, to the extent set forth in paragraph "D" and the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 19, 1969.

DATED: Albany, New York
June 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER