

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
SLATTERY ASSOCIATES, INC. and  
JOSEPH CATAPANO, Individually and as an Officer  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s) or~~ Period(s)  
March 1, 1969 to February 29, 1972.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within

Notice of Determination by ~~(certified)~~ mail upon ~~XXXXXX~~ Slattery Associates, Inc. and  
Joseph Catapano, Individually and as an Officer

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Slattery Associates, Inc. & Joseph Catapano  
as follows: Individually and as an Officer  
46-36 54th Road  
Maspeth, New York 11378

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  
~~XXXXXX~~ last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

16th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
SLATTERY ASSOCIATES, INC. and  
JOSEPH CATAPANO, Individually and as an Officer

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ Period(s) :  
March 1, 1969 to February 29, 1972.

State of New York  
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within  
Notice of Determination by ~~certified~~ mail upon James F. McMahon, Esq.  
James L. Michalak, Esq.  
William B. Morris, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: James F. McMahon, Esq.  
James L. Michalak, Esq.  
William B. Morris, Esq.  
124 East 15th Street  
New York, New York 10003

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

16th day of August, 1977.

*Marsina Donnini*

*Janet Mack*



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

August 16, 1977

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Slattery Associates, Inc. & Joseph Catapano**  
**Individually and as an Officer**  
**46-36 54th Road**  
**Maspeth, New York 11378**

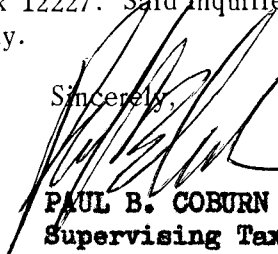
**Gentlemen:**

Please take notice of the **Determination**  
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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**PAUL B. COBURN**  
**Supervising Tax**  
**Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
SLATTERY ASSOCIATES, INC. and	:	
JOSEPH CATAPANO, Individually and as an Officer	:	DETERMINATION
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 March 1, 1969 to February 29,	:	
1972.	:	

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Applicant, Slattery Associates, Inc., and Joseph Catapano, individually and as an officer, 46-36 54th Road, Maspeth, New York 11378, filed an application 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 March 1, 1969 to February 29, 1972. (File No. 01388).

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 August 11, 1976 at 9:15 A.M. Applicant appeared by James F. McMahon, Esq., James L. Michalak, Esq. and William B. Morris, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the materials used in a contract performed by applicant for the Consolidated Edison Co. of New York, Inc., in the construction

of Astoria Generating Station Unit No. 6, was properly exempt from the imposition of New York State sales and use tax pursuant to section 1115(a)(12) of the Tax Law.

FINDINGS OF FACT

1. On January 8, 1973, as a result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Slattery Associates, Inc., and Joseph Catapano, individually and as officer, for the period March 1, 1969 to February 29, 1972 in the amount of \$31,969.00, plus penalty and interest of \$3,938.64, for a total due of \$35,908.29. Applicant agreed that \$6,626.21 was properly disallowed and paid said sum on October 7, 1972. The amount remaining in controversy is \$25,343.44 plus penalty and interest.

2. On December 18, 1970, applicant, Slattery Associates, Inc., a building contractor, entered into an agreement with the consolidated Edison Company of New York, Inc. For a lump sum, applicant was to perform the following work: (1) plant island excavation, backfill and sand fill, (2) installation of reinforced concrete and steel (backwash) circulating water piping furnished by Consolidated Edison Company, including excavation and backfill exterior, all bedding, the concrete-masonry construction of pipe blocks, etc., (3) substructure concrete-masonry construction for the turbine generator. This work was for the Astoria Generating Station - Unit No. 6, and was to be completed on or before March 31, 1972.

3. All materials purchased by applicant, Slattery Associates, Inc., were used in the performance of their contract with Consolidated Edison. The foundation of approximately 100 feet long, 50 feet high and 40 feet wide supported a turbine and generator used in the production of electricity. The piping circulates water from and returns it to the East River, and is necessary to cool the generator in order to condense the steam which is exhausted from the turbine which then drives the generator. This is the turbo-dynamic process. The turbine and generator, each weighing nearly 300 tons requires a special foundation of reinforced concrete founded on bedrock in order to function during the generation of electricity.

4. Applicant, Joseph Catapano, was a responsible officer of applicant, Slattery Associates, Inc.

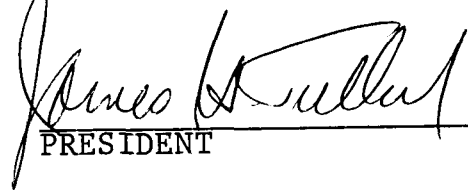
#### CONCLUSIONS OF LAW

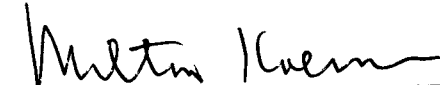
A. That the materials used in the contract performed by applicant, Slattery Associates, Inc. for the Consolidated Edison Co. of New York Inc., went into the construction of substructures for foundations of a turbine generator known as Unit No. 6 of the Astoria Generating Station. These materials were neither machinery nor equipment for use directly and exclusively in the production of electricity in accordance with the meaning and intent of section 1115(a)(12) of the Tax Law. Therefore, said materials were not exempt from the imposition of New York State sales and use tax.

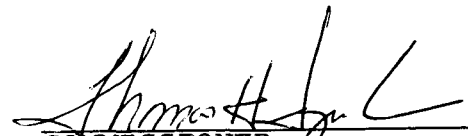
B. That the application of Slattery Associates, Inc. and Joseph Catapano, Individually and as an officer, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 8, 1973 is sustained.

DATED: Albany, New York  
August 16, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER