

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HOMOGENEOUS METALS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~Year(s)~~ or Period(s)  
June 1, 1971 through May 31, 1974.

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 14th day of June, 1977, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Homogeneous Metals, Inc.

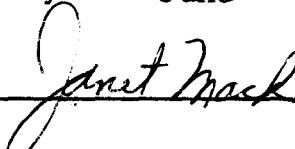
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Homogeneous Metals, Inc.  
P.O. Box 752  
West Canada Boulevard, Herkimer, NY 13354

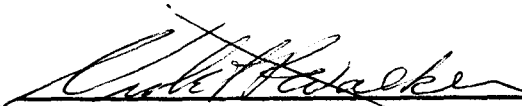
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

14th day of June, 1977.

  
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\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

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HOMOGENEOUS METALS, INC.

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Tax Law for the ~~year(s)~~ Period(s) :  
June 1, 1971 through May 31, 1974.

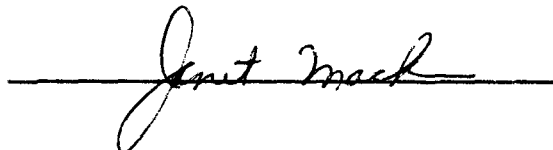
State of New York  
County of Albany

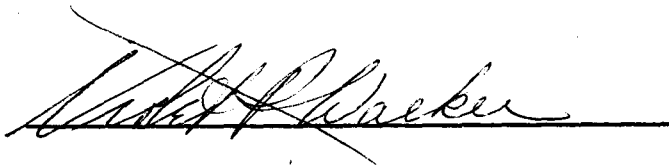
Violet Walker, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of June, 1977, she served the within  
Notice of Determination by (certified) mail upon A. Thomas Longeretta, Esq.  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: A. Thomas Longeretta, Esq.  
Longeretta and Longeretta  
23 Hopper Street  
Utica, NY 13501  
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

14th 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 14, 1977

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

Homogeneous Metals, Inc.  
P.O. Box 752  
West Canada Boulevard  
Herkimer, NY 13354

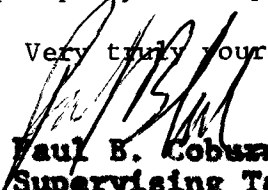
Gentlemen:

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 E. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HOMOGENEOUS METALS, INC.	:	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 June 1, 1971 through	:	
May 31, 1974.	:	

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Petitioner, Homogeneous Metals, Inc., P.O. Box 752, West Canada Boulevard, Herkimer, New York 13354, (hereinafter "Homogeneous") 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 June 1, 1971 through May 31, 1974. (File No. 10157).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York 12227, on May 13, 1976 at 10:00 A.M. Petitioner appeared by Longeretta and Longeretta (A. Thomas Longeretta, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether stainless steel containers purchased by the petitioner for shipment of its alloy powder from New York to

Texas for further processing, and which became metallurgically bonded to the contents during extrusion in Texas, were exempt from sales and use taxes under the Tax Law during the period June 1, 1971 through May 31, 1974.

II. Whether gases purchased by petitioner for use in the production of metal-alloy powder were exempt from sales and use taxes under section 1115(c) of the Tax Law, during the period June 1, 1971 through May 31, 1974.

FINDINGS OF FACT

1. Petitioner, Homogeneous, timely filed sales and use tax returns for the period June 1, 1971 through May 31, 1974. On April 17, 1975, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales Taxes Due. A Notice of Assessment Review dated October 22, 1975, fixed an agreed amount of tax of \$1,567.35, and a disagreed amount of \$4,187.19. Neither amount has been paid. Penalty and interest of \$2,325.25 were computed to November 20, 1975 on the amount assessed, for a total of \$8,079.79.

2. Petitioner, Homogeneous, paid neither sales nor use taxes on the stainless steel cylinders it purchased during the period June 1, 1971 through May 31, 1974. Petitioner, Homogeneous, gave exemption certificates to the vendors from whom stainless steel pipe and plates were purchased.

3. Petitioner, Homogeneous, was engaged in both metallurgical research and the manufacture of fine alloy metal powders and billets. The process by which these powders and billets were produced was a patented one.

4. Petitioner, Homogeneous, purchased a casting made of undisclosed metals, which was about three inches in diameter and twenty inches long. That casting allegedly had the chemistry of a finished product. The material was remelted in a vacuum-induction furnace. In its molten state, the material was atomized into a fine powder. After being screen-tested, some of this super-alloy powder was sold to various customers in and out of the United States. Another portion of the super-alloy powder was packed, 1570 lbs. to a container, in a stainless steel cylinder that was 18 inches wide and 39 inches long. Stainless steel plates were machined and used as end-caps on the cylinders, so as to enclose the alloy powder in a completely closed stainless steel container.

5. The containers were shipped for further processing to the one plant in the United States capable of extruding the powder into a billet. In that Texas plant, the cylinder and its fine alloy contents were placed in a 2,000 ton extrusion press, the can and its contents pushed through a die seven inches in diameter, and the whole was compressed from a diameter of 18 inches to 7 inches. The result was a billet or log seven inches in diameter and about 13 feet long, with a fine alloy core and a

stainless steel envelope or skin which were metallurgically bonded each to the other. The stainless steel exterior could be removed only by a machining or milling operation.

6. Petitioner, Homogeneous, received the alloy billets from the Texas extrusion plant, and in its New York facility sold them either with the stainless steel exterior still attached or machined it off to the diameter billet ordered by its individual customer. The cost of the stainless steel container was not separately billed to any customer.

7. The stainless steel container in which the alloy powder had been shipped to Texas for extrusion, lost its identity as a container in the processing. It became an integral part of the resultant metal billet, sold as its product by petitioner, Homogeneous.

8. The stainless steel cylinders and plates from which end-caps were made to form containers in which fine alloy powder was shipped to customers were materials or supplies used by petitioner, Homogeneous, in its production.

9. The sales of alloy powder in containers amounted to about eight percent of sales.

10. The petitioner did not submit evidence on its purchase of gases.

CONCLUSIONS OF LAW

A. That the stainless steel containers used by petitioner, Homogeneous, in converting super-alloy powder to super-alloy billets were neither machinery nor equipment within the meaning of the exemption set forth in section 1115(a)(12) of the Tax Law. However, these containers did become a component part of a product produced for sale. The purchase and use of the stainless steel cylinders and plates so utilized by petitioner are exempt from sales and use taxes under sections 1101(b)(4)(i) and 1118(4) of the Tax Law.

B. That the purchase of stainless steel and plates for the containers used to ship super-alloy powder is subject to retail sales and use tax. The petitioner, Homogeneous, has failed to sustain the burden of proof that the purchase of these steel containers is covered by any exemption. Any ambiguity or uncertainty must be resolved against exemption.

C. That gases purchased by petitioner for use in the production of metal alloy powder were not exempt from sales and use tax under section 1115(c) of the Tax Law.


D. That the interest in excess of the minimum and the penalty imposed pursuant to section 1145(a) of the Tax Law shall be waived.



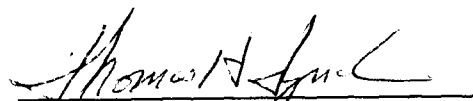
E. That the petition of Homogeneous Metals, Inc. is granted to the extent that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated April 17, 1975, as modified by the Notice of Assessment Review dated October 22, 1975, shall be recomputed in accordance with this decision, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
June 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER