

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HAWKER SIDDELEY, INC.

(now known as LISTER DIESELS, INC.)

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)~~ or Period(s)  
September 1, 1970 through August 31, 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that

He is an employee of the Department of Taxation and Finance, over 18 years of

age, and that on the 29 day of September, 1977, he served the within  
Hawker Siddeley, Inc.

Notice of Determination by (~~certified~~) mail upon (now known as Lister Diesels

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

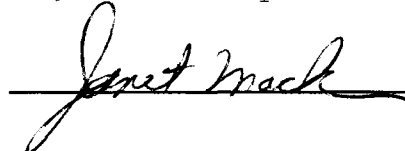
as follows: Lister Diesels, Inc.  
formerly known as Hawker Siddeley, Inc.  
555 East 56th Hiway  
Olathe, Kansas 66061

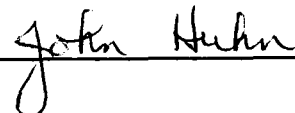
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

29 day of September, 1977





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HAWKER SIDDELEY, INC.

(now known as LISTER DIESELS, INC.)

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)~~ or Period(s)  
September 1, 1970 through August 31, 1971

AFFIDAVIT OF MAILING

State of New York  
County of Albany

John Huhn, 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 29 day of September, 1977, she served the within

Notice of Determination by ~~(certified)~~ mail upon Leslie J. Schreyer  
Chadbourn, Parke,

Whiteside & Wolff, Esqs. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Leslie J. Schreyer, Esq.

Chadbourn, Parke, Whiteside & Wolff, Esqs.

30 Rockefeller Plaza

New York, New York 10020

and by depositing same enclosed in a postpaid properly addressed wrapper in a

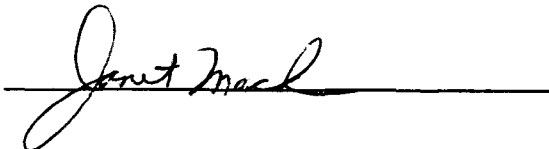
(post office or official depository) under the exclusive care and custody of

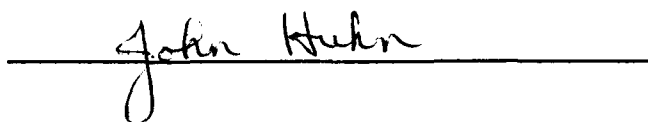
the United States Postal Service within the State of New York.

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

29 day of September, 1977.







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

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

September 29, 1977

**Lister Diesels, Inc.**  
**Formerly known as Hawker Siddeley, Inc.**  
**555 East 56th Hiway**  
**Olathe, Kansas 66061**

**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) **1139 & 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 month** 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,

**John J. Sollecito**  
**Director of the Tax Appeals Bureau**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
HAWKER SIDDELEY, INC.	:	DETERMINATION
(now known as LISTER DIESELS, INC.)	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Periods September 1,	:	
1970 through August 31, 1971.	:	

---

Applicant, Hawker Siddeley, Inc., 7 Delaware Drive, Lake Success, New York (now known as Lister Diesels, Inc., 555 East 56th Hiway, Olathe, Kansas 66061) 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 periods September 1, 1970 through August 31, 1971. (File No. 11774)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 22, 1977 at 1:15 P.M. The applicant appeared by Chadbourne, Parke, Whiteside & Wolff, Esqs. (Leslie J. Schreyer, Esq. of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether an application for credit or refund of sales taxes paid on sales cancelled more than three years after the sales tax returns had been timely filed and sales taxes paid, shall be granted by the State Tax Commission due to unusual circumstances.

FINDINGS OF FACT

1. The applicant, Hawker Siddeley, Inc. (hereinafter "Hawker"), timely filed New York State sales and use tax returns for the periods September 1, 1970 through August 31, 1971.

2. On October 21, 1970, Hawker invoiced We're Associates, Inc. pursuant to a written contract dated July 3, 1969 for engine generating sets and related equipment:

Contract Price.....	\$597,470.00
N.Y.S. Sales Tax at 5%.....	<u>29,873.50</u>
Total Invoice.....	<u>\$627,343.50</u>

3. On March 15, 1971, Hawker invoiced We're Associates, Inc. for five more engine sets as follows:

Contract Price.....	\$623,915.00
N.Y.S. Sales Tax at 5%.....	<u>31,195.75</u>
Total Invoice.....	<u>\$655,110.75</u>

4. Hawker timely paid the sales tax on the sales reported above. For sales taxes applicable to sales billed in 1972, Hawker set up a reserve.

5. On November 1, 1974, We're Associates, Inc. filed a complaint against Hawker in the Supreme Court of the State of New York, County of Nassau. Rescission of the entire contract was sought.

6. On January 17, 1975, Hawker filed an answer and counter-claim in the United States District Court of New York.

7. On March 20, 1975, Hawker and We're Associates, Inc. signed a settlement agreement providing among other things that Hawker was to return all monies that We're Associates, Inc. had paid on the contract, and that all generating sets installed were to be returned to Hawker.

8. Prior to November of 1974, applicant, Hawker, had no knowledge of the events which eventually led to the complete cancellation of the contract and the return of all the merchandise sold under that contract.

9. On June 10, 1975, Hawker filed an application for refund of the sales taxes it had paid which were referable to the We're Associates, Inc. contract.

10. On August 19, 1975, the Sales Tax Bureau notified applicant, Hawker, that its claim for refund was denied in full, since it was not filed within the statutory three-year period.

11. On August 26, 1975, applicant, Hawker, made an application for a hearing on the redetermination of the denial of its claim for refund.

12. Applicant, Hawker, concedes that the application for refund was filed more than three years after the periods for which the taxes were paid. Applicant, Hawker, urges that it would have been impossible to file a claim for refund of sales taxes within three years since applicant, Hawker, had no idea that there would be a return of the merchandise sold and cancellation of the sale. Applicant, Hawker, asks the Tax Commission to invoke its general power under the Tax Law to assess, determine, revise and adjust taxes.

#### CONCLUSIONS OF LAW

A. That the Tax Law limits refunds of taxes, penalty or interest erroneously, illegally or unconstitutionally collected or paid, and in the case of a tax paid by the applicant to the Tax Commission to "...within three years after the date when such amount was payable under this article". Section 1139(a)(ii), Article 28 of the Tax Law.

B. That nothing in section 1142.6 of Article 28 of the Tax Law gives the Tax Commission equitable powers to vary or

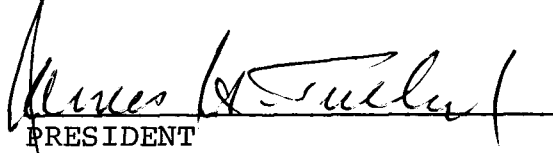
expand the refund authority set forth in clear and unambiguous language in section 1139(a) of the Tax Law.

C. That the application for redetermination of the denial of the claim for a refund of sales and use taxes by Hawker Siddeley, Inc. is denied in its entirety.

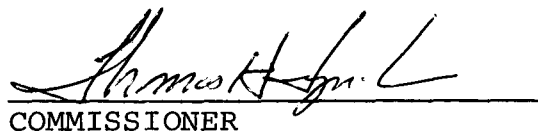
DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER