

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Refund~~ Application

of

NATIONAL LEAD COMPANY

TITANIUM ALLOY MFG. DIVISION :

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)~~ Period 8/1/65-:
2/28/70.

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

State of New York
County of Albany

MARY GROFF , 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 10th day of February , 1976 , she served the within
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon ~~TITANIUM ALLOY MFG.~~
DIVISION

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: National Lead Company
Titanium Alloy Mfg. Division
P.O. Box C, Bridge Station
Niagara Falls, New York 14305

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

10th day of February , 1976.

Janet Mack

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

NATIONAL LEAD COMPANY
TITANIUM ALLOY MFG. DIVISION

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 ~~XXXXXX~~ Period 8/1/65-
2/28/70.

State of New York
County of Albany

MARY GROFF, 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 10th day of February, 1976, she served the within
Notice of ~~Determination~~ (or Determination) by ~~(certified)~~ mail upon
HAROLD KING, Esq.
JOHN LAWLOR, Esq.
JOHN LAUER, Esq.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harold King, Esq., John Lawlor, Esq., &
John Lauer, Esq.
National Lead Company, TAM Division
P.O. Box C, Bridge Station
Niagara Falls, New York 14305

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

10th day of February, 1976.

Janet Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
February 10, 1976

National Lead Company
Titanium Alloy Mfg. Division
P.O. Box C, Bridge Station
Niagara Falls, New York 14305

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 & 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.

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,

PAUL GREENBERG

HEARING OFFICER
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
NATIONAL LEAD COMPANY	:	DETERMINATION
TITANIUM ALLOY MFG. DIVISION	:	
for a 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 28,	:	
1970.	:	

The applicant, National Lead Company, Titanium Alloy Mfg. Division, P.O. Box C, Bridge Station, Niagara Falls, New York 14305, applied for a 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 28, 1970. (File No. 13-5267260-12).

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on April 18, 1970, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Harold King, Esq. and John Lawlor, Esq. The Sales Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq. of counsel).

ISSUES

I. Were purchases of air pollution control devices subject to sales tax?

II. Were purchases of silica mill balls, which in the attrition of the milling process became part of the end product sold to the ceramic industry, subject to sales tax?

FINDINGS OF FACT

1. The taxpayer, National Lead Company, Titanium Alloy Mfg. Division, timely filed New York State sales and use tax returns for the period August 1, 1965 to February 28, 1970.

Said returns were prepared in good faith and in the belief that the taxpayer had complied with the Tax Law of New York State.

2. A Notice of Determination of sales and use taxes due including interest and penalties for the period August 1, 1965 to February 28, 1970, was issued on February 16, 1971, against the taxpayer under Notice No. 90744763. Tax liability was predicated on purchases of air filtration equipment, "scrubber" devices and silica milling balls.

3. The applicant, National Lead Company, Titanium Alloy Mfg. Division, purchased air pollution control devices of two types; cloth filter dust collectors and scrubber-ventilation systems. The cloth filter devices treat the air by passing it through specially woven cloth which remove dust particles that are discharged into collection hoppers. Particles of rutile titanium oxide compounds, zirconium silicate and other zirconium compounds are collected in this manner and are reintroduced into the manufacturing cycle. The scrubber-ventilation system treats air with water to remove hydrochloric acid and ammonia in gaseous mixtures with dust particles of zirconium oxychloride from the air. Such air pollution control devices are utilized to meet New York State air pollution standards promulgated pursuant to Article 19 of the Environmental Conservation Law.

4. The applicant purchased silica milling balls for use in the production of materials for the ceramic industry. These balls are utilized to mill or grind materials into smaller particle size. In this process, the silica balls are worn down as silica from these balls is introduced into the ceramic material. The silica from these balls is not a necessary ingredient of the ceramic material but is merely introduced into said material inadvertently through the grinding process.

CONCLUSIONS OF LAW

A. That, purchases of air pollution control devices are exempt from sales tax as machinery and equipment utilized in the production of tangible personal property pursuant to section 1115(a)(12) of the Tax Law.

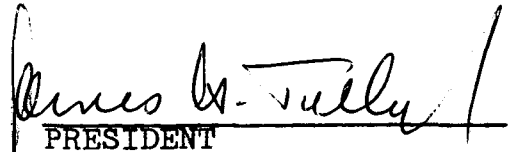
B. That, purchases of silica milling balls are retail sales subject to sales tax pursuant to section 1101(b)(4)(i) of the Tax Law. Although the substance of these silica balls becomes a part of the end product of the manufacturing process through attrition, such addition of silica particles is inadvertent and not essential to the manufacturing process. These silica milling balls cannot be considered as purchased for resale as a physical component part of tangible personal property pursuant to section 1101(b)(4)(i)(A) of the Tax Law.

C. That, the applicant, National Lead Company, Titanium Alloy Mfg. Division, acted in good faith. All penalties are cancelled.

D. That, the application is granted to the extent that any tax liability attributable to purchases of air pollution control devices is cancelled. The application is denied as regards the imposition of tax and the interest thereon attributable to purchases of silica milling balls. The applicant's tax due and the interest thereon shall be recomputed in accordance with this determination.

DATED: Albany, New York
February 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER