

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

OBERDORFER FOUNDRIES, 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) :  
September 1, 1970 through August 31, 1973.

State of New York  
County of Albany

Carmen Mottolese, 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 13th day of August, 1976, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Oberdorfer  
Foundries, Inc. ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Oberdorfer Foundries, Inc.  
Thompson Road  
Syracuse, New York  
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

13th day of August, 1976

Carmen Mottolese

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

OSWEGO CASTINGS CORP.

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)~~ Period(s) :  
September 1, 1970 through August 31, 1973.

State of New York  
County of Albany

Carmen Mottolese, 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 13th day of August, 1976, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Oswego Casting  
Corp. ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Oswego Casting Corp.  
Seneca & Mitchell Streets  
Oswego, New York

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)~~  
~~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

13th day of August, 1976.

Carmen Mottolese

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

OBERDORFER FOUNDRIES, INC. AND  
OSWEGO CASTINGS CORP.

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 ~~Years~~ Period(s)  
Sep't. 1, 1970 through Aug. 31, 1973

State of New York  
County of Albany

Carmen Mottolese, 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 13th day of August, 1976, she served the within Notice of Determination by ~~certified~~ mail upon Joseph H. Murphy, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joseph H. Murphy, Esq.  
c/o Hancock, Estabrook, Ryan,  
Shove & Hust, Esqs.  
One Mony Plaza  
Syracuse, New York 13202  
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

13th day of August, 1976

Carmen Mottolese

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

August 13, 1976

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-3850

Oberdorfer Foundries, Inc.  
Thompson Road  
Syracuse, New York

Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **1139 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,

*[Signature]*  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

August 13, 1976

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-3850

┌ Oswego Castings Corp.  
Seneca & Mitchell Streets  
Oswego, New York

Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **1139 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  
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will be referred to the proper party for reply.

Very truly yours,

Enc.

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

OBERDORFER FOUNDRIES, 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 Period September 1, 1970 through  
August 31, 1973.

DETERMINATION

and

In the Matter of the Application

of

OSWEGO CASTINGS CORP.

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 November 30, 1970 through  
August 31, 1973.

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Applicant, Oberdorfer Foundries, Inc., located at Thompson Road,  
Syracuse, New York, is a non-ferrous job foundry. Its wholly owned subsidiary,  
Oswego Casting Corp., located at Seneca and Michel Streets in Oswego,  
New York, manufactures patterns and dies from which castings are made.  
A Notice of Determination and Demand for Payment of Sales and Use Taxes

Due was issued against Oberdorfer Foundries, Inc., on March 11, 1974, under Notice No. 90,751,959 for the period September 1, 1970 through August 31, 1973 for sales and use tax amounting to \$215.49. The applicant, Oberdorfer Foundries, Inc., applied for a formal hearing, as did applicant, Oswego Casting Corp.

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on July 22, 1975 at 1:30 P.M. A formal hearing was held for applicant, Oswego Casting Corp., at the same place and date. It was stipulated that the facts which gave rise to the asserted tax liability were the same in both cases and that the decision in the case of the applicant, Oberdorfer Foundries, Inc., should be applied in the case of the applicant, Oswego Casting Corp., based upon the figures in its application. Both applicants appeared by Hancock, Estabrook, Ryan, Shove and Hust, Esqs. (Joseph H. Murphy, Esq., of counsel). The Sales Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Seis, Esq., of counsel).

#### ISSUES

I. Were payments by applicant, Oberdorfer Foundries, Inc., to its subsidiary pattern maker, applicant, Oswego Castings Corp., for the purchase of patterns or molds to be used by applicant, Oberdorfer Foundries Inc., in the manufacture of castings to be resold to customers exempt from New York State sales and use taxes as sales for resale?

II. Were payments made by applicant, Oberdorfer Foundries, Inc., for changes in the original pattern ordered from applicant, Oswego Castings Co., until acceptance by applicant, Oberdorfer Foundries, Inc., as patterns, molds or dies from which applicant, Oberdorfer Foundries, Inc., could make castings for sale to the customer taxable as payments for repairing and maintaining the original molds?

FINDINGS OF FACT

1. Applicant, Oberdorfer Foundries, Inc., hereinafter called "Oberdorfer", manufactured and sold complex non-ferrous castings, from which its customers made metal parts, machines, internal combustion engines and the like. Being non-ferrous, the castings were primarily of bronze or aluminum, with intricate corings that had to be pressure-tight and metalurgically sound. Some castings were required to be tested to X-ray quality and tolerances of ten-thousandths of an inch, sometimes necessitating ten to twenty thousand quality checks.

2. Applicant, Oberdorfer, did not make patterns or molds but bought them from pattern making concerns, one of which was applicant, Oswego Castings Corp. Applicant, Oberdorfer, then resold the patterns to the customer to whom it originally sold the castings made to that customer's specifications.

3. During the period in question a customer would submit to applicant, Oberdorfer, a statement of what it wanted, i.e., the type and number of castings together with a blueprint of the casting. Applicant, Oberdorfer, would first



determine if it could make the casting. If it could, its engineers and the customer's engineers would confer and decide on the foundry process to be used to make the casting. The decision might be to proceed by a conventional sand mold, by a more permanent iron mold, or in the case of an intricate piece of work, by a die casting. Then, engineers of applicant, Oberdorfer, and applicant, Oswego Castings Corp., would meet, study the blueprint, mark it up and design the pattern or mold to be used.\*

Applicant, Oswego Castings Corp., would then make a preliminary pattern or mold and, from that, a sample casting. This sample would be laid out and tested on line to determine its metallurgical and design acceptability. This trial and error or "debugging" process would be repeated several times until the applicant's engineers determined that, in their judgment, an acceptable casting could be produced.

A sample casting was then shipped to the customer for its own testing. The debugging process would be repeated with the pattern or mold going back to the pattern-maker for appropriate changes until, finally, the customer would signify approval of the casting in writing. Then the applicant, Oberdorfer, would have its production casting pattern for sale to the customer.

4. Applicant, Oberdorfer, sold the pattern mold it had developed from the customer's specifications through all the necessary changes to the casting acceptable to the customer, at a price applicant, Oberdorfer, had set to cover the preliminary casting and the cost to put the pattern or mold into a condition

acceptable to the customer. This was a lump sum price quoted by Oberdorfer in writing to the customer at the outset of the process.

5. Applicant, Oberdorfer, paid to applicant, Oswego Castings Corp., the full price Oberdorfer quoted to its customer, who in turn paid Oberdorfer in a lump sum.

6. Applicant, Oberdorfer, kept all the accounting records for applicant, Oswego. At the completion of the preliminary pattern or mold, the cost thereof was billed to applicant, Oberdorfer. As the various changes were made and the work on the pattern progressed to the final casting, satisfactory to the customer, applicant, Oberdorfer, paid Oswego on a monthly basis charged to individual patterns. These monthly payments were pursuant to annual blanket orders.

7. Patterns made to particular customer's specifications were retained at applicant,<sup>5</sup> Oberdorfer's foundry for production of that customer's castings but title was reserved to the customer.

8. When applicant, Oswego Castings Corp., made repairs to machinery of applicant, Oberdorfer, it charged a retail sales tax.

#### CONCLUSIONS OF LAW

A. That applicant, Oberdorfer Foundries, Inc., made purchases of patterns from applicant, Oswego Castings Corp., for resale to Oberdorfer's ordering customers, and that such sale by Oswego Castings Corp. was exempt


from retail sales tax under sections 1101(b)(4)(i)(A) and 1101(b)(5) of Article 28 of the Tax Law.

B. That work done by applicant, Oswego Casting Corp., on preliminary patterns sold to applicant, Oberdorfer Foundries, Inc., in order to enable the sale of said patterns to the ordering customer was not repairs or maintenance but rather a sale of services for resale and thus exempt from retail sales tax under section 1105(c)(3) of Article 28 of the Tax Law.

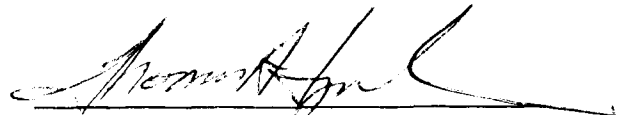
C. That the application of Oberdorfer Foundries, Inc., is granted and the Notice and Demand for Payment of Sales and Use Taxes issued March 11, 1974, is cancelled, and that the application of Oswego Castings Corp. shall be treated in a like manner.

DATED: Albany, New York  
August 13, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER