

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

COLONIAL SAND & STONE CO., INC.

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 ~~Year(s) or~~ Period(s) :  
~~August 1, 1965 to November 30, 1967~~

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 30th day of June, 19 77, she served the within Notice of Determination by ~~certified~~ mail upon Colonial Sand & Stone Co., Inc. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Colonial Sand & Stone Co., Inc.  
1740 Broadway  
New York, 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

30th day of June, 19 77.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

COLONIAL SAND & STONE CO., INC.

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Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
August 1, 1965 to November 30, 1967

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 30th day of June, 1977, she served the within

Notice of Determination by ~~(certified)~~ mail upon William B. Bernstein, CPA  
of the Firm of Panetti,  
Haber & Zimmerman, CPA (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
William B. Bernstein, CPA  
as follows: of the Firm of Panetti, Haber & Zimmerman, CPA  
150 East 58th Street  
New York, 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

30th day of June, 1977

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

June 30, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Colonial Sand & Stone Co., Inc.  
1740 Broadway  
New York, 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) **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.

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 B. 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 Application	:	
of	:	
COLONIAL SAND & STONE CO., 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 August 1, 1965	:	
to November 30, 1967.	:	

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Colonial Sand & Stone Co., Inc., 1740 Broadway, New York, New York, 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 August 1, 1965 to November 30, 1967. (File No. 01778).

Formal hearings were held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 11, 1975, and were continued on August 5, 1976 at 1:15 P.M.

The applicant appeared by William B. Bernstein, CPA, of the firm of Panetti, Haber & Zimmerman, Certified Public Accountants. The Sales Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq. and Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the engine chassis on which a concrete mixer is mounted, and which is used to manufacture and transport ready-mix concrete, constitutes machinery and equipment for use or consumption directly and exclusively in the production of tangible personal property exempt from sales and use taxes.

II. Whether chassis or engine parts having a useful life of more than one year constitute parts of machinery or equipment used directly and exclusively in the production of tangible personal property, exempt from sales and use taxes.

III. Whether penalty and interest in excess of the minimum interest imposed by the Sales Tax Bureau should be cancelled.

FINDINGS OF FACT

1. The applicant, Colonial Sand & Stone Co., Inc., filed sales and use tax returns for the period August 1, 1965 through November 30, 1967. On November 22, 1968, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$146,344.63, plus penalty and interest of \$53,225.12, for a total of \$199,569.75. On February 13, 1970, the Sales Tax Bureau cancelled a portion of the assessment which was computed in error in the amount of \$14,158.55, so that the amount due was \$185,411.20. On February 11, 1969, the applicant timely filed an application for revision of the Notice of Determination.

2. The applicant, Colonial Sand & Stone Co., Inc., is a domestic corporation organized under the laws of the State of New York on November 8, 1973, with its headquarters located at 1740 Broadway, New York, New York. The applicant is engaged in the manufacture and sale of concrete, cement, concrete pipe, etc., with raw materials obtained from both outside vendors and from mines owned by it. Mining and manufacturing facilities are located in Nassau, Suffolk, Westchester, Ulster and Rockland Counties, as well as in New York City.

3. The applicant manufactures and sells "ready-mix" and "transit-mix" concrete. The process involves placing dry materials, sand, stone, cement (stored at the batching plants) and water in a concrete mixer-vehicle, consisting of a concrete mixer, a truck manufactured to specifications and a truck chassis, all purchased from different vendors. The purchase price of the concrete mixer includes the mounting of same onto the truck chassis that supplies the power to activate the mixer. The mixing of the ingredients necessary to make concrete takes place in the mixer part of the truck, partly as the vehicle is driven from the batching plant to the pouring site. It is necessary for the concrete mix to remain in a plastic or fluid state in order to prevent the mix from setting. The same engine which propels the truck over the road also turns the drum of the mixer.

4. For the periods in issue, the Sales Tax Bureau treated the mixer part of the vehicle as "machinery or equipment for use or consumption directly and exclusively in the production of tangible personal property" in accordance with the provisions of section 1115(a)(12) of the Tax Law then in effect, thus making it exempt from sales and use taxes. However, the engine chassis and its parts having a useful life of more than one year were considered taxable. The applicant contends that the Notice of Determination should be reduced by \$105,000.00.

5. The applicant believes that the engine chassis constitutes production machinery and equipment exempt from the imposition of sales and use tax. Therefore, applicant's failure to pay sales or use tax on the purchase of the engine chassis and parts is excusable.

#### CONCLUSIONS OF LAW

A. That the chassis part of the trucks was used predominantly and principally in the transportation of the ready-mix concrete to the construction sites.

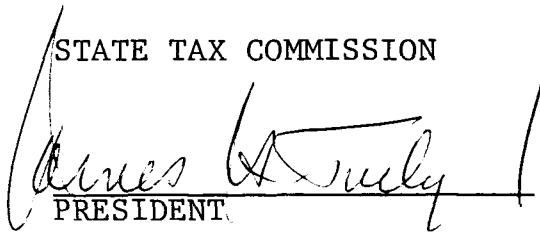
B. That the chassis part of the trucks did not constitute machinery and equipment for use and consumption directly and exclusively in the production of tangible personal property within the intent and meaning of section 1115(a)(12) of the Tax Law in effect prior to September 1, 1974. The chassis or engine parts having a useful life of more than one year likewise do not constitute parts of machinery used exclusively in the production of tangible

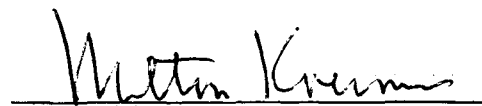
personal property. See Opinion of Counsel, dated September 24, 1965, N.Y.S. Tax Bulletin No. 1965-3, pp. 41 and 42.

C. That the application of Colonial Sand & Stone Co., Inc. is granted to the extent that the interest, in excess of the minimum interest, and the penalty imposed pursuant to section 1145(a) of the Tax Law is waived, and that except as so granted is in all other respects denied.

DATED: Albany, New York  
June 30, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER