

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALLIED MATERIALS CORP.

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)~~ Period(s) :
June 1, 1968 to February 28, 1971.

State of New York
County of Albany

Catherine Steele, 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 November, 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Allied Materials Corp.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Allied Materials Corp.
P.O. Box 189
Cobleskill, New York 12043

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

30th day of November, 1976.

Catherine Steele

Janet Mack



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

November 30, 1976

TELEPHONE: (518) **457-3850**

Allied Materials Corp.
P.O. Box 189
Cobleskill, New York 12043

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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ALLIED MATERIALS CORP.	:	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, 1968	:	
to February 28, 1971.	:	

Applicant, Allied Materials Corp., P.O. Box 189, Cobleskill, New York 12043, has 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 period June 1, 1968 to February 28, 1971. (Notice No. 90,746,463).

A small claims hearing was held June 18, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York, before Harry Huebsch, Hearing Officer. The applicant appeared by K.F. Burgin, Secretary Treasurer of the corporation. The Sales Tax Bureau appeared by Peter J. Crotty, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Are explosives used by Allied Materials Corp. in its operations exempt under Articles 28 and 29 of the Sales and Use Tax Law.

FINDINGS OF FACT

1. Applicant, Allied Materials Corp., filed timely sales and use tax returns for the period June 1, 1968 to February 28, 1971. Sales tax was not paid on purchases of explosives used in operations. Applicant, Allied Materials Corp., contends that explosives are items used directly and exclusively in production and also that they are a power to be considered in the same category as electricity, gas, steam or fuel under section 1115(c) of the Tax Law. The

Sales Tax Bureau took issue with this contention and issued a determination in the amount of \$402.33 additional tax due plus \$143.56 interest for a total of \$545.89.

2. Applicant, Allied Materials Corp., operates a quarry and stone pit in Schoharie County. It extracts stone and reduces it to usable size for road building. Holes are drilled in rock into which explosives are placed. The resulting explosion produces a rock size that can be used in the next step of production which is crushing the stone into smaller sizes.

CONCLUSIONS OF LAW

A. The fact that the explosives are used in production does not in itself entitle the applicant to exemption under section 1115(c) of the Sales and Use Tax Law which spells out the sources of energy or power that are exempt under section 1115 and the compensating use tax imposed under section 1110. These sources of energy or power include gas, electricity, fuel, refrigeration and steam services. Section 1115(c) does not include energy or power generated through the use of explosives and does narrow down the source of energy to controlled reactions that furnish energy over a considerable length of time.

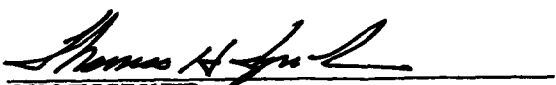
B. That the application of Allied Materials Corp. is denied and the Notice of Determination issued September 17, 1971 as revised January 27, 1972 is sustained.

DATED: Albany, New York
November 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER