

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
SOUTHERN TIER IRON WORKS  
DIVISION OF CIVES CORPORATION  
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)  
March 1, 1969 through February 28, 1973.

AFFIDAVIT OF MAILING

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 29th day of November, 1976, she served the within Notice of Determination by ~~certified~~ mail upon Southern Tier Iron Works Division of Cives Corporation, ~~(representative of the)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:  
Southern Tier Iron Works  
Division of Cives Corporation  
Shaw Road, P.O. Box K  
Conklin, New York 13748  
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  
29th day of November, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
SOUTHERN TIER IRON WORKS : AFFIDAVIT OF MAILING  
DIVISION OF CIVES CORPORATION :  
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) :  
March 1, 1969 through February 28, 1973.

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 29th day of November, 1976, she served the within  
Notice of Determination by ~~certified~~ mail upon John S. Donovan

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John S. Donovan, Esq.  
Cives Corporation  
104 South Bay Road  
North Syracuse, New York 13212  
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  
29th day of November, 1976

Janet Mack

Catherine Steele



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 29, 1976

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

**Southern Tier Iron Works  
Division of Cives Corporation  
Shaw Road, P.O. Box K  
Conklin, New York 13748**

**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 TAX COMMISSION

A formal hearing was held at the offices of the State Tax Commission, Binghamton, New York on October 9, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer appeared by John S. Donovan, Esq. The Sales Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq. of counsel).

## ISSUE

Whether purchases of machinery and equipment by a fabricator-erector were exempt from sales tax.

FINDINGS OF FACT

1. Southern Tier Iron Works Division of Cives Corporation, (hereinafter referred to as "Southern Tier" or "applicant"), timely filed New York State sales and use tax returns covering the period March 1, 1969 through February 28, 1973.

2. A notice of determination and demand for payment of sales and use taxes due and penalties and interest thereon, for the period March 1, 1969 through February 28, 1973, was issued against Southern Tier by the Sales Tax Bureau on October 9, 1973, under Notice No. 90,751,068.

3. Southern Tier applied for a revision of the determination of the deficiencies in sales and use taxes.

4. Southern Tier is a fabricator of structural steel, with facilities located at Conklin, New York. Except for a few rare sales of stock items and fabrications for delivery only (admittedly totalling less than 25% of gross sales), applicant's sales during the period in question were primarily sales made by successfully bidding to furnish and erect structural steel for various construction projects. Applicant did no erection work itself, but would solicit bids on a particular job from prospective subcontracting erectors and would use the low bid plus a markup for overhead in calculating its own bid to the owner or general contractor. Southern Tier did not make a profit on the

steel erection work. In fact, it showed a loss of \$13,000.00 on said work during the audit period.

5. The Sales Tax Bureau asserted that purchases of shop machinery and equipment used in fabrication and purchases of material incorporated into such machinery and equipment were subject to sales and use taxes of \$10,880.12, on the theory that where steel fabricated by the applicant was erected on projects for which the applicant had contracted to furnish and erect same, it was not "for sale" and the machinery and equipment were not, therefore, exempt from tax.

6. The applicant asserted that the purchase of machinery and equipment or materials incorporated into said machinery and equipment were exempt from tax under former section 1115(a)(12) of the Tax Law which exempted purchases of machinery and equipment for use or consumption directly and exclusively in the production of tangible personal property for sale.

#### CONCLUSIONS OF LAW

A. That steel fabricated by applicant and erected by its subcontractors on construction projects for which applicant had contracted to furnish and erect structural steel, was fabricated for applicant's own use and did not constitute tangible personal property for sale.

B. That the shop machinery and equipment used in fabricating

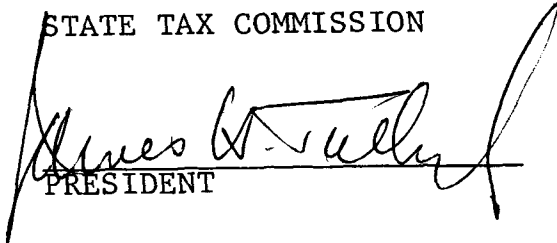
such structural steel did not constitute machinery or equipment for use or consumption directly and exclusively in the production of tangible personal property within the meaning and intent of former section 1115(a)(12) of the Tax Law.


C. That applicant's purchases of machinery and equipment and materials incorporated into machinery and equipment during the period March 1, 1969 through February 28, 1973, are subject to sales and use tax and are not exempt from same under former section 1115(a)(12) of the Tax Law.

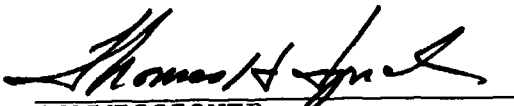
D. That the application for a revision of the determination of the deficiencies in sales and use taxes is hereby denied.

DATED: Albany, New York  
November 29, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER