

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
BERYLLIUM MANUFACTURING 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) or~~ Period ~~(s)~~ :  
10/23/74

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
~~He~~ she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 9th day of June, 1978, she served the within  
Notice of Determination by ~~certified~~ mail upon Beryllium Manufacturing Corp.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Beryllium Manufacturing Corp.  
253 West Merrick Road  
Valley Stream, New York 11580

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)~~  
~~(XXXX)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

9th day of June, 1978.

*[Signature]*

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

BERYLLIUM MANUFACTURING CORP.

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10/23/74

State of New York  
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he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 9th day of June, 1978, he served the within

Notice of Determination by ~~(certified)~~ mail upon Armand Ferranti  
President of Beryllium Manufacturing Corp.  
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Armand Ferranti  
as follows: President of Beryllium Manufacturing Corp.  
253 West Merrick Road  
Valley Stream, New York 11580

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(post office or official depository) under the exclusive care and custody of  
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last known address of the (representative of the) petitioner.

Sworn to before me this

9th day of June, 1978.

*[Signature]*

*John Huhn*



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

June 9, 1978

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Beryllium Manufacturing Corp.**  
**253 West Merrick Road**  
**Valley Stream, New York 11580**

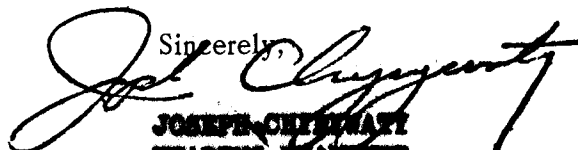
**Gentlemen:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1250** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**JOSEPH CHAPPERT**  
**HEARING EXAMINER**

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 :  
BERYLLIUM MANUFACTURING 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 October 23, 1974. :

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Applicant, Beryllium Manufacturing Corp., 253 West Merrick Road, Valley Stream, New York 11580, 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 October 23, 1974 (File No. 11346).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 29, 1977 at 9:15 A.M. The applicant appeared by Armand Ferranti, president of Beryllium Manufacturing Corp. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alisza Schwadron, Esq., of counsel).

ISSUE

Whether applicant is entitled to a refund, pursuant to sections 1119(a)(2) and 1210(a)(1) of the Tax Law, for New York City local sales taxes paid on the purchase of tangible personal property which was only stored in that locality and subsequently shipped to a point outside that locality.

FINDINGS OF FACT

1. Applicant purchased two machines and related attachments from Hardinge Brothers, Inc. of Elmira, New York. These machines were for use in applicant's Valley Stream, New York Plant. However, they were delivered on October 21, 1974 to the Cut-All Division of Beryllium Manufacturing Corp. located in Jamaica, New York. The Cut-All Division had the equipment that was required to unload the machinery, whereas the Valley Stream facility was not equipped to receive machinery of this type. On October 23, 1974, the applicant engaged A. Gumbs Machinery Movers, Rigging and Haulers, Inc. to deliver the subject machinery from its Jamaica plant to the Valley Stream, New York plant.

2. Applicant did not use the machinery at its Jamaica, New York division, but rather stored the machines for two days while arrangement could be made to transfer the machines to the Valley Stream, New York plant.

3. Applicant paid New York City local sales tax on the purchase of this machinery in the sum of \$1,260.89.

4. On August 26, 1975, Beryllium Manufacturing Corp. filed an application for credit or refund of state and local sales and use taxes in the sum of \$1,260.89 for sales tax paid on the purchase of machinery. The Sales Tax Bureau denied the claim for refund.

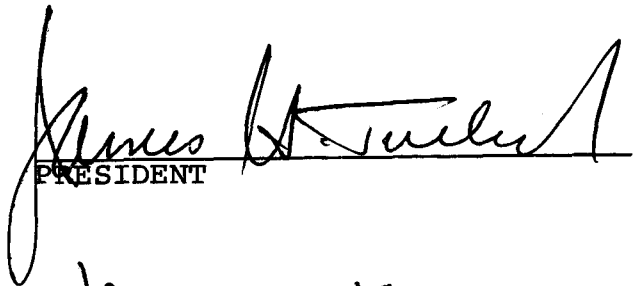
CONCLUSIONS OF LAW

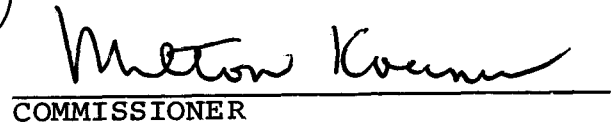
A. That the two machines and related attachments purchased by applicant, Beryllium Manufacturing Corp., did not constitute tangible personal property purchased in bulk within the meaning and intent of section 1119(a)(2) of the Tax Law. Accordingly, it is not necessary to decide here whether any refund or credit under said section (set forth in Article 28 of the Tax Law) is available against city and county sales and use taxes (Article 29) where goods are purchased and stored in one locality in New York State and subsequently shipped to and used in another locality in New York State.

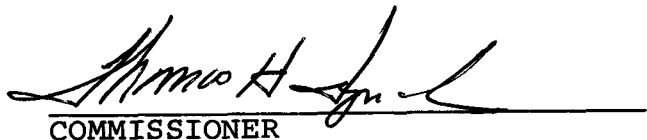
B. That the application of Beryllium Manufacturing Corp. is denied.

DATED: Albany, New York  
June 9, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**

TAX APPEALS BUREAU

TO... Secretary to State Tax Commission

Decision remailed June 21, 1978.  
Please change Section numbers on  
transmittal letter from "1138 & 1250"  
to "1139 & 1243".

6/21/78

Joseph Chyrywaty

TA-26 (4-76) 25M

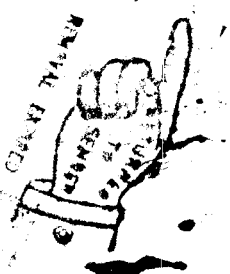
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Beryllium Manufacturing Corp.  
253 West Merrick Road  
Valley Stream, New York 11580





*1701  
Avenue N.Y.  
175 Dickerville,  
Amityville,*



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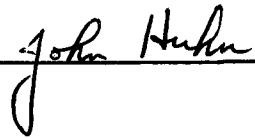
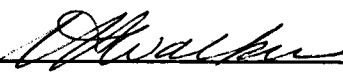
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175 Dickson Avenue  
Amityville, New York 11701

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STATE OF NEW YORK

Department of Taxation and Finance

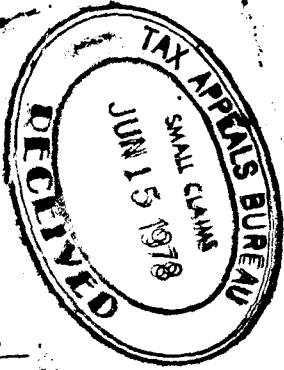
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Armand Ferranti  
President of Beryllium Manufacturing Corp.  
253 West Merrick Road  
Valley Stream, New York 11580



175 Dickson Avenue  
Amityville, N.Y. 11701

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Beryllium Manufacturing Corp.  
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21st day of June, 1978

*M. Walker*

*John Huhn*