

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THE FAIRBANKS COMPANY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use Tax :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year(s) or Period(s) :
September 1, 1969 through August 31, 1972

State of New York
County of Albany

John Huhn , 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 22nd day of March , 1978 , she served the within
Determination by ~~certified~~ mail upon The Fairbanks Company

~~representative of~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: The Fairbanks Company
2 Glenwood Avenue
Binghamton, NY 13902

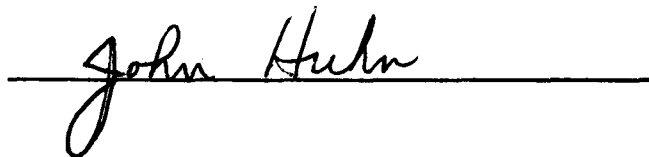
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

22nd day of March , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THE FAIRBANKS COMPANY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use Tax :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year(s) or Period(s) :
September 1, 1969 through August 31, 1972

State of New York
County of Albany

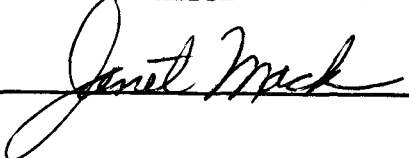
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of March , 1978 , she served the within
Determination by ~~XXXXXXXXXX~~ mail upon James M. Hayes, Esq.

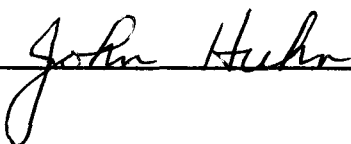
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: James M. Hayes, Esq.
Hinman, Howard & Kattell
Security Mutual Building
Binghamton, NY 13901
and by depositing same enclosed in a postpaid properly 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

22 day of March , 1978







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

March 22, 1978

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

**The Fairbanks Company
2 Glenwood Avenue
Binghamton, NY 13902**

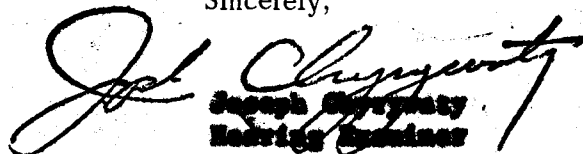
Gentlemen:

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) **1130 & 1243** 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 J. Chapparo
Deputy Commissioner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
THE FAIRBANKS COMPANY	:	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 September 1, 1969 through	:	
August 31, 1972.	:	

Applicant, Fairbanks Company, 2 Glenwood Avenue, Binghamton, 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 September 1, 1969 through August 31, 1972 (File No. 01532).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, Binghamton, New York, on October 18, 1976 at 2:45 P.M. Applicant appeared by Hinman, Howard and Kattell (James M. Hayes, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether core and mold-making machines are exempt from sales tax under section 1115(a)(12) of the Tax Law as machinery or equipment for use or consumption directly and exclusively in the production of tangible personal property for sale.

II. Whether repair parts with a useful life of more than one year, used in connection with mold and core-making machines, are exempt from sales tax under section 1115(a)(12) of the Tax Law.

III. Whether supplies used in connection with mold and core-making machines are exempt from local sales tax under section 1210(a) of the Tax Law.

FINDINGS OF FACT

1. The applicant, Fairbanks Company, filed New York State and local sales and use tax returns for the period September 1, 1969 through August 31, 1972.

2. On February 16, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Fairbanks Company, for tax due in the sum of \$15,386.03, plus interest of \$1,408.82. As the result of a field audit, additional tax was determined to be due from applicant, based on purchases of capital asset and expense items deemed taxable by the Sales Tax Bureau.

3. On audit, the Sales Tax Bureau reviewed all capital-asset purchases made by the applicant during the audit period and determined that an additional sales and/or use tax was due in the sum of \$7,912.79 on these purchases. The recurring expense purchases were examined for the sample period of March, April and May of 1972, and a projection was made based on the margin of error determined for the period sampled. This projection resulted in additional tax due of \$7,473.24.

4. On January 11, 1973, applicant paid the sales tax due and simultaneously applied for a refund in the sum of \$9,795.80. This application included a request for refund of sales tax paid in the sum of \$6,000.25, on five core and mold-making machines. A refund was also requested for sales tax paid in the sum of \$3,795.55 on repair parts for the core and mold-making machinery, as well as supplies used in connection with that machinery. The refund on the repair parts was limited to the tax paid on those parts which had a useful life of over one year. The refund on supply items was limited to the local taxes paid on such supplies.

5. Applicant, Fairbanks Company, manufactured and sold bronze, iron and cast-iron valves. To produce these valves, it is necessary first to make molds and cores. A mold is used to form the outer part of the casting or valve and a core forms the inner section. These molds and cores are made of sand and a small percentage of adhesive material. The sand and adhesive material is placed into the hopper of a mold or core-making machine, which then produces the sand-based molds or cores to meet the specifications of a particular design. The molds and cores are joined together which makes a completed mold with an inside core. This completed assembly is then moved down a conveyor where the valves are made by pouring molten metal into the assembled mold with the core inside. After the molten metal has hardened and the casting is formed, the molds must be broken to remove the casting.

6. Applicant neither bought nor sold molds or cores. Rather, it produced and consumed its own. This was done because the molds must be used almost immediately after they are produced and because the molds cannot be shipped due to their delicate nature.

7. In assessing the tax on the core and mold-making machines, the Sales Tax Bureau asserted that these machines were not used directly in the production of tangible personal property for sale and, therefore, were not afforded the exemptions as provided in section 1115(a)(12) of the Tax Law. Consequently, the Sales Tax Bureau contended that the repair parts used on these machines, as well as the supplies used in connection with these machines, were not provided with the exemption in section 1115(a)(12) or section 1210(a) of the Tax Law.

CONCLUSIONS OF LAW

A. That the mold and core-making machines are machinery or equipment for use or consumption directly and exclusively in the production of tangible personal property for sale within the meaning and intent of section 1115(a)(12) of the Tax Law. (See: Niagara Mohawk Power Corp. v. Wanamaker, 286 App. Div. 446, aff'd 2 NY 2d 764 (1955)).

B. That the repair parts with a useful life of more than one year are used in connection with the exempt mold and core-making machines, and are, therefore, exempt from sales tax within the meaning and intent of section 1115(a)(12) of the Tax Law.

C. That the supplies used in connection with the exempt mold and core-making machinery are exempt from local sales tax within the meaning and intent of section 1210(a) of the Tax Law.

D. That the application of the Fairbanks Company is granted and the Sales Tax Bureau is hereby directed to refund the sum of \$9,795.80, together with such interest as may be lawfully owing.

DATED: Albany, New York
March 22, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER