

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
International Salt Co., Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 of the Tax Law  
for the Period 6/1/73 - 8/31/75. :

State of New York  
County of Albany

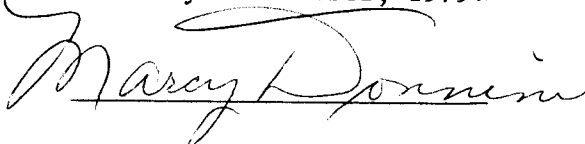
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Determination by mail upon International Salt Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

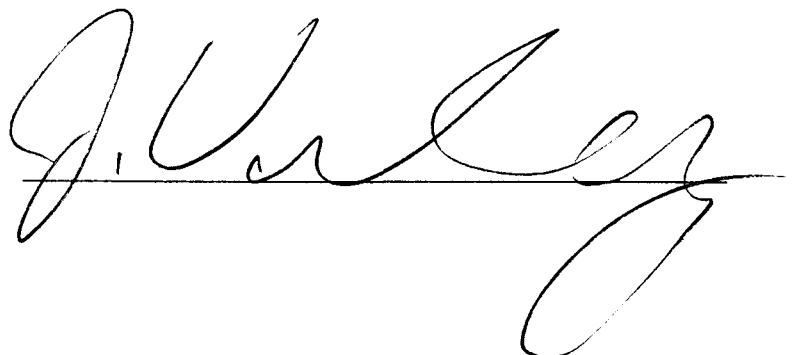
International Salt Co., Inc.

Clarks Summit, PA 18411  
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
19th day of October, 1979.

  
Mary Dorman

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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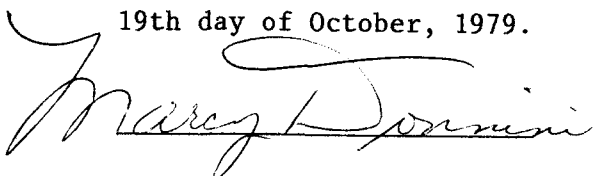
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Determination by mail upon Ralph H. Weber the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

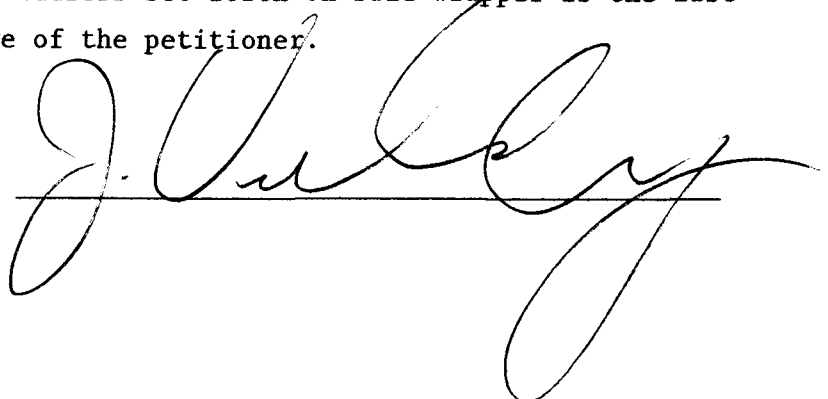
Mr. Ralph H. Weber  
Administrator, Tax Department  
Clarks Summit, PA 18411

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  
19th day of October, 1979.

  
Mary L. Dominici

  
Jay Vredenburg

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

October 19, 1979

International Salt Co., Inc.  
Clarks Summit, PA 18411

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 & 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Ralph H. Weber  
Administrator, Tax Department  
Clarks Summit, PA 18411  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
INTERNATIONAL SALT 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 June 1, 1973 through August 31,	:	
1975.	:	

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Applicant, International Salt Company, Clarks Summit, Pennsylvania 18411, 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 June 1, 1973 through August 31, 1975 (File No. 17029).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on August 4, 1977 and was continued on October 6, 1977. Applicant appeared by its Tax Department Administrator, Ralph H. Weber. The firm of Harter, Secrest & Emery, Esqs. (Wallace F. Baker, Esq., of counsel) submitted a supplemental brief on behalf of applicant. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether applicant is liable for use tax on services for installation or repairs of personal property, where the servicemen failed to bill applicant for the tax therefor.

II. Whether blasting agents or explosives and supplies used in connection therewith constitute "fuel" for use or consumption directly and exclusively in the production of personal property.

III. Whether equipment used to store excess salt (for which there is no

current market therefor) constitutes machinery or equipment used directly and predominantly in the production of tangible personal property.

IV. Whether fuel oil (most of which is not recoverable) used to prevent the roof of underground salt cavities from dissolving, constitutes machinery or equipment used directly and predominantly in the production of tangible personal property, or whether it is a part or supply used in connection therewith.

V. Whether the equipment used to remove ash (which is donated to the local highway department for road building) constitutes machinery or equipment used directly and predominantly in the production of tangible personal property.

VI. Whether the bratticing, equipment, machines and supplies necessary to supply oxygen to the mine below the surface (as required by the Federal Bureau of Mines) constitutes machinery or equipment for use directly and predominantly in the production of tangible personal property.

VII. Whether the coal furnaces used at the Watkins Glen refinery to produce 95% of the steam in the evaporation process of extracting salt, constitute machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property.

VIII. Whether the parts or supplies of furnaces having a useful life of more than one year are exempt from sales and use taxes.

IX. Whether machinery and equipment consisting of pads and filters used to prevent waste salt from entering and polluting Seneca Lake constitute machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property.

X. Whether materials used for footings and for other miscellaneous items are exempt from use tax.

#### FINDINGS OF FACT

1. Applicant, International Salt Company (hereinafter referred to as "the

Company")), is an operating company of Akzona, Inc., which has its U. S. headquarters in Asheville, North Carolina. Applicant is a corporation organized under the laws of the State of New Jersey, with its principal office located at Clarks Summit, Pennsylvania. Applicant operates a salt mine at Retsof, New York, and a salt well, evaporating and packaging plant at Watkins Glen, New York.

2. On July 22, 1976, based on an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the Company for the tax period June 1, 1973 through August 31, 1975 in the amount of \$50,662.21, plus penalty and interest of \$20,282.61, for a total of \$70,944.82. On the original audit, use tax of \$81,656.85 was imposed on purchases or services. Applicant consented to a portion of the audit amounting to \$30,994.64 and is contesting the \$50,662.21 balance thereof. Applicant timely filed an application for a hearing to review the aforementioned determination.

3. With respect to the Retsof mine, the auditor found additional tax to be due on lumber, repairs, repair parts, "brattice" material, explosive supplies (designated as dynamite or blasting agents) and materials used for footings and miscellaneous items considered to be supplies. With respect to the Watkins Glen location, additional tax was found to be due on building materials, blasting sand, shoes, coal handling equipment, incinerator, ash handling equipment, fuel oil and miscellaneous items considered to be supplies subject to use tax.

4. The Retsof mine is a sub-surface mine from which the Company extracts rock salt, a commercial grade salt, by using the "room and pillar" method of mining. A salt bed has an average height of about  $10\frac{1}{2}$  feet. The Company runs so-called "rooms" in different directions so as to leave between 60 and 80

square foot "pillars" for a roof support. In the surrounding area, rock salt is extracted. A Universal undercutter (an electrically and hydraulically operated piece of equipment similar to a chain saw) is used to cut or kerf the bottom of the room of salt to a thickness of 6 inches and a depth of  $10\frac{1}{2}$  feet deep, in a room 65 feet wide. In that standard-size room, 52 holes  $1\frac{5}{8}$  inches in diameter are drilled 12 feet deep. A blasting agent (ammonium nitrate or nitro carbonitrate) is then blown into these holes. Dynamite sticks and electric blasting caps are then used to detonate the blasting agent. The detonation is time-delayed so that the charges located in the holes nearest the kerf are ignited first, with the detonation sequence running generally from the kerf upwards and outwards to the corners of the face being blasted. The resulting blast breaks up the salt so that about 75% of it is extracted in cake form in sections weighing from 50 lbs. to about 2 to 3 tons each. It is then ready to be loaded by Jeffrey loader machines, which load a twin-diesel shuttle car of 20 tons. These cars haul the salt to a Stamler feeder/breaker which acts as a primary crusher. The salt is hoisted to the surface where it goes to the mill. There it is crushed, screened, graded and binned as to the different types and grades of salt. Later on it is loaded in railroad cars or trucks for shipment. The rock salt is used for ice control on highways, by chemical plants for the manufacture of chlorine and caustic soda, by water treatment plants, as a water softener and by tanneries to cure hides. After the salt has been processed and graded and placed in bins (but prior to being loaded onto a railroad car or truck for shipment), additives are used, i.e., magnesium carbonate as an anti-caking compound and liquid calcium for a little dust-control resulting from spillage.

5. The Sales Tax Bureau imposed sales tax on the purchase of two tractors used in the Retsof mine to cart fine salt spillage, which spillage is stored

in abandoned working areas. The Department of Environmental Conservation restricts the Company from dumping this salt on the surface. This is excess salt which exceeds applicant's sales.

6. The Department of Environmental Conservation required the Company to install a dust collector system (including fans and heaters), in order to remove salt dust and to prevent the dust from clogging machinery and eventually polluting the outside air.

7. The Company installed a system of bratticing in the mine itself. "Brattice" material consists of burlap, sailcloth, plastic and similar material. It is used to control the direction of the flow of air to the working areas in the mine. Fresh air is forced from the outside atmosphere down into the mine below. Without sufficient oxygen in the mine, one couldn't breathe. This air system also carries off excess dust and the fumes from blasting. The brattice material is moved from one place to another but the permanent brattice line (consisting of urethane foam, gypsum board or similar material) is stationary. The brattice material (moveable) has a life expectancy of about 7 to 8 years. This ventilation system is a requirement of the Mine Safety Control Board. Without it, the mine would be inoperable. The Sales Tax Bureau imposed use tax on the brattice material purchased.

8. At the formal hearing, the auditor conceded that the tax on a shuttle car purchased from Noster Industries for use in the Retsof mine, amounting to \$13,110.00 should be reduced to \$1,100.00. He further conceded that the tax of \$9,060.00 relating to Specchio Ford should be reduced to zero, since the same had been paid by the Company. He also conceded the elimination of tax of \$3,277.03 with reference to the purchase of steel from Seneca Engineering, since it was production equipment and, therefore, was exempt.

9. The Company maintains a refinery at Watkins Glen, New York, where it



extracts salt from brine wells through an evaporation process. Most of the brine cavities are located about 2,500 feet below ground level, with two pipes inserted into the hole. Water is then pumped from Seneca Lake into one of the pipes. This pressurizes the brine cavity. The brine is forced to the surface and, in turn, goes into the evaporating process. The water is used to dissolve the salt. A gallon of brine contains about 2.5 pounds of salt when it is delivered to the surface. The water/salt solution is brought to the evaporator plant where it is finally crystallized to various grades of salt, e.g., ordinary table salt and purified salt (about 99.996% sodium chloride) which is sold to pharmaceutical houses and chemical companies. Except for an outside 220 volt service, the Company generates its own power at the Watkins Glen facility. It operates a coal-fired boiler plant where it produces about 120,000 lbs. per hour of steam to aid in the evaporation process. About 95% of that steam is used directly in the production process. The balance is used to heat other buildings and to produce electricity. The Company maintains a turbo generator to produce power. About 1,200 BTU's per pound of steam enter the turbo generator, of which 1,100 BTU's per pound go into the evaporator process, while the remaining 100 BTU's per lb. produce electrical power.

10. When the salt leaves the evaporator, it is still in a slurry form, about 10% to 30% solid. It then goes to a rotary drum filler. The steam is introduced into the filler and the salt is dried. The salt then passes through a cooler where it is brought down to almost ambient temperature. It then goes to various product lines or to storage within the plant. The evaporating and salt drying equipment are in one building. The boilers are in a separate building. Part of the coal handling equipment is in the boiler house and part of it is outside. The turbo generators are in another building. It is all an integrated system.

11. Seven to eight percent of the coal becomes ash, which is removed from the boiler by a pneumatic system. The ash is placed in a silo and is donated to the local highway department.

12. The Company is required to use anti-pollution devices to prevent waste material from entering Seneca Lake. For that purpose, it uses Demister pads or filters to prevent the salt from entering the lake. The Sales Tax Bureau imposed a tax on the materials used to accomplish this.

13. Fuel oil is used to prevent the roof of underground salt cavities from dissolving during the extraction process of mining salt with pressurized brine water. The oil acts as a barrier to prevent the cavity from fracturing. Most of the oil is not recoverable.

14. The Company manufactures its own cans, which it uses for packaging salt. The cans containing salt are used for resale. Conveyor belts and palletizers are used for such purpose.

15. Applicant contends that the explosives or blasting agents constitute fuel consumed in the production process and are, therefore, exempt from use tax.

16. Certain services were performed for the Company by servicemen within New York State. The billing to the Company for the services did not contain New York state and local sales tax. The Sales Tax Bureau imposed additional tax on applicant, based on the aforesaid servicemen's charges for the installation or fabrication of machinery and equipment not held for resale.

#### CONCLUSIONS OF LAW

A. That applicant is liable for tax on services for the installation or repairs of personal property, despite the fact that servicemen failed to bill applicant therefor, within the intent and meaning of section 1133(b) of the Tax Law.

B. That the blasting agents or explosives (and supplies in connection therewith) used by applicant in its production process do not constitute fuel exempt from the imposition of use tax, within the intent and meaning of section 1115(c) of the Tax Law (Matter of Allied Materials Corp., State Tax Commission Determination, dated November 30, 1976).

C. That the equipment used to store excess salt when there is no current market for it, does not constitute machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property exempt from sales and use taxes, within the intent and meaning of section 1115(a)(12) of the Tax Law.

D. That the fuel oil used to prevent the roof of underground salt cavities from dissolving at the Watkins Glen refinery does not constitute machinery or equipment for use or consumption in the production of tangible personal property, nor does it constitute parts or tools or supplies used in connection with such machinery or apparatus.

E. That the material used for footings and for other miscellaneous items alleged to be exempt does not constitute equipment directly used in the manufacturing process and is, therefore, subject to use tax pursuant to section 1115(a)(12) of the Tax Law.

F. That the bratticing, equipment, machines and supplies used to channel fresh air into the salt mine at Retsof (without which the mine would be inoperable) constitute machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property exempt from sales and use taxes, within the intent and meaning of section 1115(a)(12) of the Tax Law.

G. That the coal furnaces at the Watkins Glen refinery producing the steam used in the evaporation process of extracting salt, as well as the parts

thereof having a useful life of more than one year are exempt, in accordance with the intent and meaning of section 1115(a)(12) of the Tax Law.

H. That machinery and equipment consisting of pads and filters used to prevent waste salt from entering and polluting Seneca Lake are exempt from sales and use taxes, in accordance with the intent and meaning of section 1115(a)(12) of the Tax Law.

I. That the equipment used to remove ash (which is donated to the local highway department for road building) constitutes machinery or equipment used directly and predominantly in the production of tangible personal property, within the meaning and intent of section 1115(a)(12) of the Tax Law.

J. That the application of International Salt Company is granted to the extent indicated in Finding of Fact "8" and in Conclusions of Law "F", "G", "H" and "I", but is in all other respects denied.

K. That the Sales Tax Bureau is hereby directed to recompute the use tax due from International Salt Company in accordance with the determination herein.

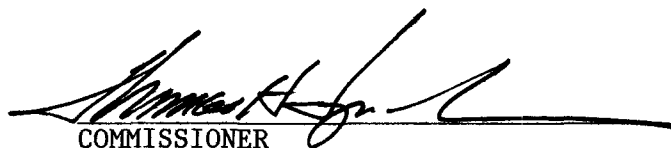
DATED: Albany, New York

STATE TAX COMMISSION

OCT 11 1979

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

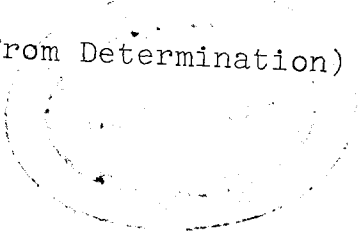


New York State Department of  
**TAXATION and FINANCE**  
TAX APPEALS BUREAU

TO....Paul .Coburn.....

Remailed 10/31/79

Better address (from Determination)



M-75 (5/76)

From Robert F. Mulligan

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

International Salt Co., Inc.

AFFIDAVIT OF MAILING

For a ~~Redetermination of a Deficiency~~ :  
~~xxxxxx~~ :  
Revision of a Determination or a Refund :  
of **Sales and Use Taxes** :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the Year(s) or Period(s) :  
~~xxxxxx~~ :  
**June 1, 1973 through August 31, 1975.**

State of New York  
County of **Albany**

**Jay Vredenburg**, 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 **31st** day of **October**, 1979, she served the within  
**Notice of Determination** by ~~(certified)~~ ~~xxxxxx~~ mail upon  
**Ralph H. Weber** (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: **Ralph H. Weber**  
**Administrator, Tax Department**  
**International Salt Co., Inc.**  
**Clarks Summit, PA 18411**  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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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

**31st** day of **October**, 1979

**Joanne Knapp**

