

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Rockwell International Corp. :

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 9/1/71 - 11/30/75. :

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Rockwell International Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

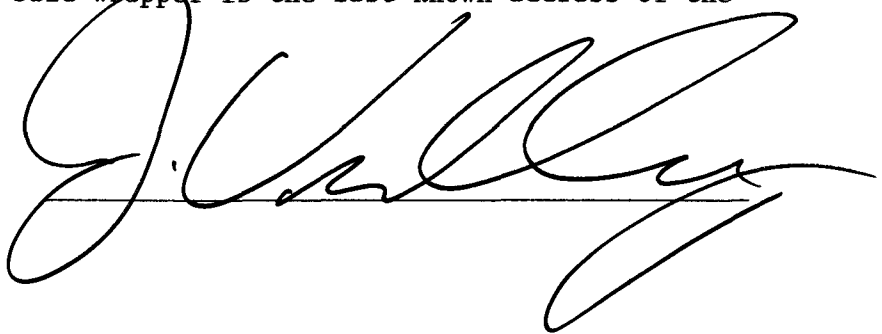
Rockwell International Corp.
600 Grant St.
Pittsburgh, PA 15219

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
22nd day of February, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rockwell International Corp. :
for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
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AFFIDAVIT OF MAILING

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Richard F. Youmans, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

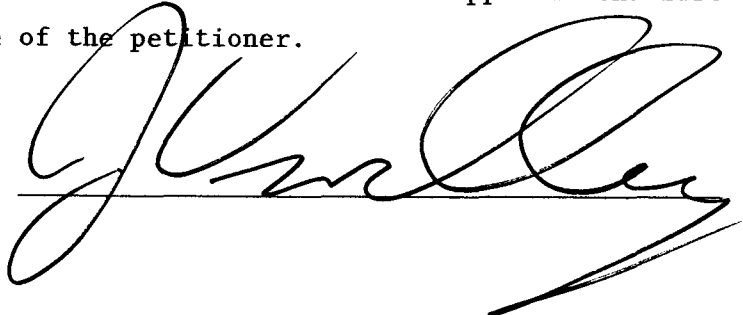
Mr. Richard F. Youmans
International Tax Council
Western Hemisphere, 600 Grant St.
Pittsburgh, PA 15219

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 February, 1980.

Joanne Knapp



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

February 22, 1980

Rockwell International Corp.
600 Grant St.
Pittsburgh, PA 15219

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
Richard F. Youmans
International Tax Council
Western Hemisphere, 600 Grant St.
Pittsburgh, PA 15219
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
ROCKWELL INTERNATIONAL 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 September 1, 1971 through	:	
November 30, 1975.	:	

Applicant, Rockwell International Corp., 600 Grant Street, Pittsburgh, Pennsylvania 15219, 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, 1971 through November 30, 1975 (File No. 16562).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on March 10, 1977 and was continued on July 13, 1977 at 11:15 A.M. Applicant appeared by Richard F. Youmans. The Audit Division appeared by Peter Crotty, Esq. (Arnold M. Glass and James J. Morris, Jr., Esqs., of counsel).

ISSUE

Whether applicant is subject to the imposition of sales and use taxes on applicant's costs for installation of processing equipment as installation of equipment only or exempt from said taxes as installation of components constituting a capital improvement.

FINDINGS OF FACT

1. On July 29, 1976, as a result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Rockwell International Corp. covering the period September 1, 1971

through November 30, 1975 in the amount of \$81,816.94, plus penalty and interest of \$35,140.10, for a total due of \$116,957.04.

2. Applicant has paid a portion of the assessment and the sole remaining item, which is the issue, is the amount of sales taxes assessed in the amount of \$42,967.33, plus penalty and interest, for the period ending August 31, 1973.

3. Applicant constructed and/or installed various unique and sophisticated pieces of equipment and assembled each of them in conjunction with one another in a pilot project plan known as the "Molten Carbonate Process Demonstration Plant" immediately adjacent to "The Arthur Kill Power Generating Station" (the no. 20 boiler therein), a power plant owned and/or operated by the Consolidated Edison Company. The pilot plant was specifically designed to obtain test data on the integrated operation of the molten carbonate process for flue gases sulphurization.

4. Applicant's buildings were designed and constructed to house various portions of equipment, e.g. one building for all the pilot plant controls, another building for the reducer, other portions of the equipment mounted in the yard and connected to the other pieces of equipment and other equipment was built on a slab on top of pilings, in a pit beneath ground surface level.

5. The pilot plant was built on a concrete slab which was supported by pylons. Part of the process equipment (i.e. the Two Zone Refractory Lining, Refractory Cast Head, Outlet Manifold and the Quench Tank) was located beneath the Reducer Vessel in a pit in the foundation and was bolted to the foundation slab.

The Regenerator Column was mounted on a concrete foundation which was cast into a steel skirt that extended down to the bottom of the column where a round cylinder and a ring was bolted and welded to the column cylinder and the

bolts were cast into the concrete.

All equipment was bolted down or welded to the foundation and was interconnected by means of ducts and pipes.

6. Applicant installed all pieces of equipment in such a way that none was portable and each and every piece was fixed and mounted permanently for the equipment's useful life, all of which exceeded one year.

7. All equipment installed by applicant functioned as one single entity but not resulting in the production of power since no increase in generating capacity was achieved.

8. All the equipment, taken in toto, constituted a "research and development facility" which enhanced the overall value of the power plant itself by reason of the existence of a test plant amenable to experimentation as well as a demonstration of the fact that additional processes could be incorporated into the power plant.

9. Applicant could not reasonably remove all or any part of the equipment without damaging same or rendering the remaining equipment useless except that certain portions could be replaced, e.g. control panels or motors.

10. Applicant could not dismantle said equipment and reinstall same in conjunction with any other plant and applicant never intended to remove all or any part of said equipment.

11. Applicant conducted certain tests and purchased certain tools, supplies and equipment with a useful life of less than one year incident to the installation of the aforementioned equipment.

12. Applicant at all times, acted on and in reliance on the advice and counsel of its professional tax advisors.

CONCLUSIONS OF LAW

A. That applicant's assembly of the equipment involved constituted a

single capital improvement to the Arthur Kill Power Generating Station, as real property and therefore applicant is not liable for sales tax on the installation costs for such equipment.

B. That applicant is liable for sales taxes on such other items as temporary facilities, test supervisors, startup and operations test plans, equipment rentals, coveralls, and maintenance, totaling in all \$41,814.77 listed as part of installation costs, on which tax, at 7 percent, would be \$2,927.03.

C. That the interest in excess of the minimum statutory rate and the penalty imposed pursuant to Section 1145(a) of the Tax Law are hereby cancelled.

D. That the application of Rockwell International Corp. is granted to the extent indicated in Conclusions of Law "A" and "C". That applicant is liable for the sales tax as indicated in Conclusion of Law "B" above. The Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 29, 1976 and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER