

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Seatrain Shipbuilding Corp. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law :  
for the Period 4/1/69-8/31/72. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon Seatrain Shipbuilding Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seatrain Shipbuilding Corp.  
Brooklyn Navy Yard  
Brooklyn, NY 11205

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  
13th day of February, 1980.

Jeanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Seatrain Shipbuilding Corp. :  
for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
under Article 28 & 29 of the Tax Law :  
for the Period 4/1/69-8/31/72. :

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 13th day of February, 1980, he served the within notice of Determination by mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs  
Gates & Laber  
1345 Ave. of the Americas  
New York, NY 10019

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  
13th day of February, 1980.

Joanne Krupp

[Signature]

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

February 13, 1980

Seatrain Shipbuilding Corp.  
Brooklyn Navy Yard  
Brooklyn, NY 11205

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  
Gates & Laber  
1345 Ave. of the Americas  
New York, NY 10019  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
SEATRRAIN SHIPBUILDING CORPORATION	:	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 April 1, 1969 through	:	
August 31, 1972.	:	

Applicant, Seatrain Shipbuilding Corporation, Brooklyn Navy Yard, Brooklyn, 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 April 1, 1969 through August 31, 1972 (File No. 17091).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1978 at 9:30 A.M. and was continued June 22, 1978 at 8:30 A.M. and July 19, 1978 at 1:30 P.M. Applicant appeared by Gates and Laber, Esqs. (Jerome Kretchmer, Esq., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt and Irving Atkins, Esqs., of counsel).

ISSUES

I. Whether or not certain "Clyde" or gantry cranes constituted real property exempt from sales and use taxes.

II. Whether or not certain overhead or bridge cranes constituted capital improvements within the meaning and intent of section 1105(c)(3) of the Tax Law.

III. Whether one of the "Clyde" cranes in issue constituted machinery and equipment for use directly and exclusively in the production of tangible

personal property in accordance with the provisions of section 1115(a)(12) of the Tax Law in effect prior to August 31, 1972.

FINDINGS OF FACT

1. Applicant, Seatrain Shipbuilding Corporation, executed a Consent Extending the Period of Limitation for Assessment for the taxable period September 1, 1969 through August 31, 1972 to September 20, 1976.

2. On November 21, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period April 1, 1969 through August 31, 1972 for \$1,077,441.97, with penalty and interest of \$603,292.12, for a total of \$1,680,734.09, based on a field audit of applicant's books and records. Applicant timely filed a protest with respect to the said determination.

3. The notice of determination referred to in Finding of Fact "2" was revised downward. Applicant agreed to a tax in the amount of \$286,518.03 but disagreed to an additional tax of \$167,878.28 with respect to certain "Clyde" and overhead cranes.

4. The Sales Tax Bureau and applicant have stipulated that all of the cranes in issue, except one, were entitled to the state-wide manufacturer's exemption under section 1115(a)(12) of the Tax Law and that one of the cranes was used in common housekeeping facilities and in manufacturing. The Sales Tax Bureau contends that all of the cranes in issue are subject to the New York City sales tax of 3 percent prior to August 31, 1972 and that one of the cranes is subject to both state-wide and New York City sales and use tax. Applicant contends that the installation of the cranes constituted capital improvements to real property as defined in the Real Property Tax Law and is exempt from the imposition of sales and use taxes.

5. The gantry or "Clyde" cranes are utilized to assemble portions of

ships on the ways. The crane boom and body are mounted on four legs, each of which, in turn, rests upon a wheeled platform similar to a railroad flatcar. All of the moving platforms move laterally on steel rails. These cranes were specially designed for use in applicant's shipyard and were assembled on the site.

6. The bridge or overhead cranes consist of an I-beam element that spans the entire width of a factory building. Wheels fastened to each end of the beam run on tracks mounted on the walls of the building so that, with the aid of electric winches, the beam can be rolled from one end of the structure to the other. The crane operator's cab, from which the crane element is suspended, moves laterally along the beam from one wall to the other. Thus, the crane can be moved to any point in the depth or width of the building. Each of the specially designed bridge cranes had to be mounted in place by removing a portion of the building's roof in which it was installed. The aforementioned bridge cranes are utilized to manufacture or fabricate structures or parts in the building or repair of ships.

7. The gantry or "Clyde" cranes can be dismantled and are removable without serious injury or damage to the freehold or real property.

8. The bridge or overhead cranes cannot readily be dismantled or removed without serious damage or injury to the buildings in which they are housed.

#### CONCLUSIONS OF LAW

A. That the installation of the bridge or overhead cranes constituted an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in section 102 of the Real Property Tax Law, within the meaning and intent of section 1105(c)(3) of the Tax Law.

B. That the installation of the gantry or "Clyde" cranes did not constitute

an addition or capital improvement to real property. (City of Bayonne v. Port Jersey Corporation; Global Terminal and Container Services, Inc., Supreme Court of New Jersey, ---N.J.---, March 20, 1979. See CCH State Tax Reporter, New Jersey, Vol. 2 ¶200-809; p. 10,763.)

C. That one of the gantry or "Clyde" cranes referred to in Finding of Fact "4" did not constitute machinery or equipment for use directly and exclusively in the production of tangible personal property, within the meaning and intent of section 1115(a)(12) of the Tax Law in effect prior to August 31, 1972.

D. That the aforementioned "Clyde" crane referred to in Conclusion of Law "C" was therefore not exempt from sales and use taxes.

E. That the remaining gantry or "Clyde" cranes in issue herein were subject to the New York City Sales and Use Tax Law.

F. That the determination of the Sales Tax Bureau is hereby amended by deleting therefrom the tax imposed on the overhead or bridge cranes in accordance with Conclusion of Law "A", above.

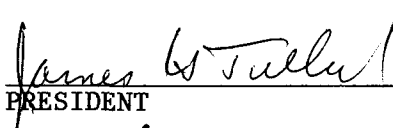
G. That the Audit Division is directed to recompute the tax due in accordance with Conclusion of Law "F", above.

H. That the application of Seatrain Shipbuilding Corporation is granted to the extent of Conclusions of Law "A", "F" and "G" and is in all other respects denied.

DATED: Albany, New York

**FEB 13 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

COMMISSIONER