STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of	:	
Elwin G. Smith	:	
Div. of Cyclops 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 & 29 of the Tax Law for the Periods 3/1/72 - 2/28/75.	:	

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 17th day of October, 1980, he served the within notice of Determination by mail upon Elwin G. Smith, Div. of Cyclops Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Elwin G. Smith
Div. of Cyclops Corp.
100 Walls St.
Pittsburgh, PA 15202

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
17th day of October, 1980.

Deborah A Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Elwin G. Smith :
Div. of Cyclops 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 & 29 of the Tax Law
for the Periods 3/1/72 - 2/28/75. :

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 17th day of October, 1980, he served the within notice of Determination by mail upon Albert J. Tomalis 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. Albert J. Tomalis
Keefer, Wood, Allen & Rahal
208-210 Walnut St., P.O. Box 1226
Harrisburg, PA 17108

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
17th day of October, 1980.

Deborah A Bank

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

October 17, 1980

Elwin G. Smith
Div. of Cyclops Corp.
100 Walls St.
Pittsburgh, PA 15202

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
Albert J. Tomalis
Keefer, Wood, Allen & Rahal
208-210 Walnut St., P.O. Box 1226
Harrisburg, PA 17108
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ELWIN G. SMITH DIVISION OF CYCLOPS 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 Periods March 1, 1972 through February 28, 1975.	:	

Applicant, Elwin G. Smith Division of Cyclops Corp., 100 Walls Street, Pittsburgh, Pennsylvania 15202, 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 periods March 1, 1972 through February 28, 1975 (File No. 11096).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on March 16, 1978 at 9:15 A.M. Applicant appeared by Keefer, Wood, Allen and Rahal, Esqs. (Albert J. Tomalis, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Laurence E. Stevens, Esq., of counsel).

ISSUE

Whether applicant's production activity constituted fabrication or manufacturing subject to compensating use tax under section 1110 of the Tax Law.

FINDINGS OF FACT

On November 5, 1975, pursuant to an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Elwin G. Smith, Division of Cyclops Corp., for the periods

March 1, 1972 through February 28, 1975 for $30,127.38, plus penalty and interest of $10,195.10, for a total of $40,322.48. This was done on the grounds that tax was due on the use of materials which were manufactured by applicant in the performance of capital improvement contracts.

2. During the periods in issue, applicant furnished and installed building gutters, down-spouts, flashings and wall panels, as a subcontractor for specific projects and in accordance with individualized specifications. Sheet steel or aluminum in coil form was slit, cut, pressed, bent, embossed and painted or left unpainted to meet a customer's requirements. Some of the items furnished were joined with components furnished by other suppliers such as fasteners, clips and closures (which retained their identity). Materials such as insulation were also joined with the components. New York State use tax was paid by applicant on the purchase price of materials furnished and installed as components. Applicant has three plants that perform the various jobs as required; all three plants are located outside New York State.

3. Applicant offered a catalogue that provided potential customers with a selective guide to their products, including various types of exterior panel profiles (insulated or uninsulated), roofing and siding, coatings and finishes, and the standard colors. It also included architectural specifications of the panel system, the load span tables for the varispan, special details as to the concealed fastening, noise pollution control, other general architectural specifications relating to wall and roof systems, and the U.L. rated fire wall panels. The catalogue also illustrated applicant's various project installations, and named specific literature relating to specific subjects with greater detail. Applicant had no inventory stock available and did not offer items "across the counter". No price for any item is listed in the catalogue.

4. During the periods in issue, applicant paid sales tax on the manufactured material used in the performance of its contracts.

CONCLUSIONS OF LAW

A. That applicant, by taking a manufactured item and bending, cutting and/or modifying it to specifications, as a subcontractor to an addition or capital improvement to real property into which said item was incorporated, and which after fabrication retained its identity, is a fabricator.

B. That during the periods in issue, applicant was a subcontractor that paid sales tax on all material incorporated into capital improvements. No tangible personal property was offered for sale; therefore, applicant was not subject to compensating use tax imposed by section 1110 of the Tax Law.

C. That the application of Elwin G. Smith, Division of Cyclops Corp., is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 5, 1979 is cancelled.

DATED: Albany, New York
OCT 1 7 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER