

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Colonial Sand & Stone Co., Inc. :  
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 6/1/73 - 11/30/76. :  
\_\_\_\_\_ :

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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Colonial Sand & Stone Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

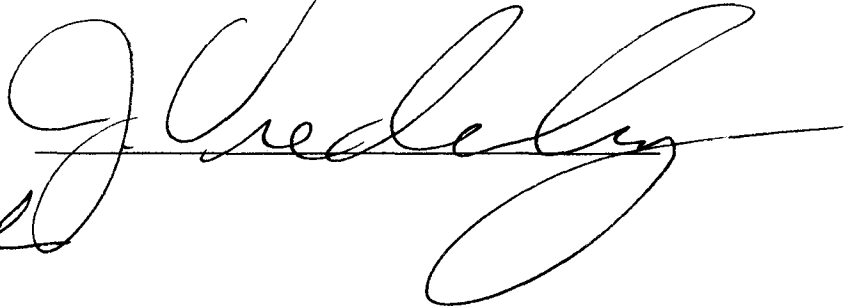
Colonial Sand & Stone Co., Inc.  
425 Park Ave.  
New York, NY 10022

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  
11th day of June, 1982.

  
\_\_\_\_\_  
Carrie A. Haglund

  
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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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Stanley Ross the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley Ross  
M. S. Scheiber & Company  
271 Madison Ave.  
New York, NY

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  
11th day of June, 1982.

*Ernie R. Hayden*

*J. Vredenburg*

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

June 11, 1982

Colonial Sand & Stone Co., Inc.  
425 Park Ave.  
New York, NY 10022

Gentlemen:

Please take notice of the Decision 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Stanley Ross  
M. S. Scheiber & Company  
271 Madison Ave.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
COLONIAL SAND & STONE CO., INC.  
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 November 30,  
1976.

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DECISION

Petitioner, Colonial Sand & Stone Co., Inc., 425 Park Avenue, New York, New York 10022, filed a petition 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 November 30, 1976 (File No. 19801).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 16, 1979 at 9:15 A.M. Petitioner appeared by M. S. Scheiber & Co., CPA's (Stanley Ross). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the truck chassis used in connection with the production of "transit mix" concrete are exempt from sales tax by virtue of section 1115(a)(12) of the Tax Law.

FINDINGS OF FACT

1. By Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated May 9, 1977, the Audit Division assessed against petitioner a deficiency of \$108,280.57, plus penalty and interest of \$69,584.04, for a total

of \$177,864.61. This assessment was subsequently reduced to reflect a deficiency of \$32,732.88.

2. The aforesaid notice was predicated upon petitioner's failure to pay sales tax on its purchase of truck chassis upon which were mounted cement mixer drums and cabinets (cabs) to form concrete mixer vehicles.

3. During the period under review, petitioner manufactured and sold "transit mix" concrete. The process involved (i) the funneling of the proper proportions of sand, gravel, cement and water (at the batching plant) into the mixer drum of the concrete mixer vehicle, (ii) the engagement, from within the cab, of the truck engine with the mixer drum to cause a rotation of the drum and mixture of the aggregates and (iii) the delivery to the job site of the "transit mix" concrete.

4. The mixture of the aggregates to make "transit mix" concrete is done in the mixer part of the concrete mixer vehicles. The mixture occurs partly as the vehicle is driven over the highway from the batching plant to the job site. The engine which turns the drum and propels the truck over the highway is part of the chassis.

5. The Audit Division considered the mixer part (mixer drums and cabinets) of the concrete mixer vehicle as machinery and equipment exempt from sales and use tax in accordance with the provisions of section 1115(a)(12) of the Tax Law.

6. Petitioner has taken an investment tax credit for the truck chassis upon its franchise tax returns.

#### CONCLUSIONS OF LAW

A. That the truck chassis is used predominantly and principally in the transportation of the "transit mix" concrete to the construction sites.

B. That truck chassis used in combination with drums and cabs in the production of "transit mix" concrete do not constitute machinery for use or consumption directly, predominantly and exclusively in the production of tangible personal property. [Tax Law, §1115(a)(12), L 1965, ch. 93 (prior to September 1, 1974), and as amended by L 1974, ch. 851; Matter of Colonial Sand & Stone Co., Inc., State Tax Commission, June 30, 1977.]

C. That the petition of Colonial Sand & Stone Co., Inc. is denied and the revised Notice of Determination and Demand for Payment of Sales and Use Taxes Due reflecting a deficiency of \$32,732.88 is sustained.

DATED: Albany, New York  
JUN 11 1982

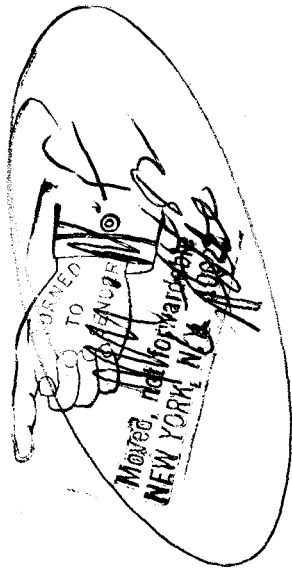
STATE TAX COMMISSION

  
PRESIDENT

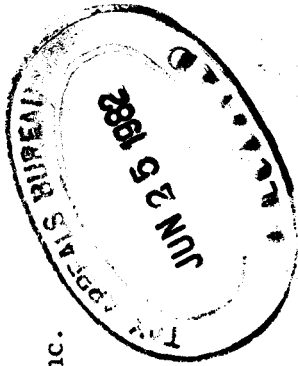
  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



Colonial Sand & Stone Co., Inc.  
425 Park Ave.  
New York, NY 10022



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

June 11, 1982

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Albany, New York 12227  
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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Stanley Ross  
M. S. Scheiber & Company  
271 Madison Ave.  
New York, NY  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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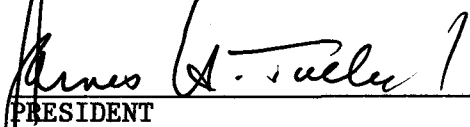
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DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION

  
PRESIDENT

  
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