

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Moog, 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 2/1/75-5/31/76.	: : : :	: : : :

AFFIDAVIT OF MAILING

State of New York
County of Albany

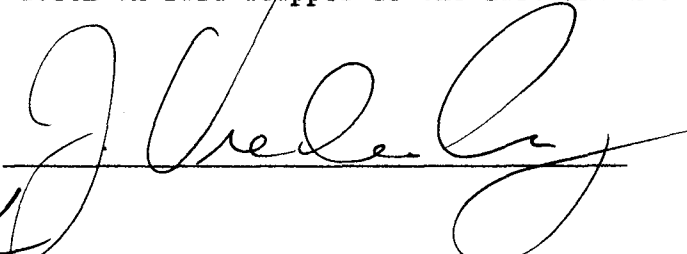
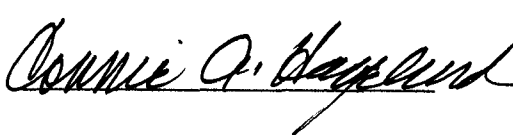
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 2nd day of June, 1982, he served the within notice of Decision by certified mail upon Moog, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Moog, Inc.
Seneca St. & Jamaica Rd.
E. Aurora, NY 14052

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
2nd day of June, 1982.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Moog, 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 & 29 of the Tax Law for the :
Period 2/1/75-5/31/76 :

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 2nd day of June, 1982, he served the within notice of Decision by certified mail upon Charles Jacobs the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles Jacobs
Moot, Sprague, Marcy, Landy, Fernbach & Smythe
Two Main Pl., Erie County Savings Bank Bldg.
Buffalo, NY 14202

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
2nd day of June, 1982.

Cornie A. Hagelund

J. Vredenburg

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

June 2, 1982

Moog, Inc.
Seneca St. & Jamaica Rd.
E. Aurora, NY 14052

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) 1139 & 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
Charles Jacobs
Moot, Sprague, Marcy, Landy, Fernbach & Smythe
Two Main Pl., Erie County Savings Bank Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
MOOG, 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 February 1,
1975 through December 31, 1976.

DECISION

Petitioner, Moog, Inc., Seneca Street and Jamison Road, East Aurora, New York 14052, filed a petition for revision of a determination or for a refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period February 1, 1975 through December 31, 1976 (File No. 21687).

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 20, 1979 at 1:15 P.M. Petitioner appeared by Moot, Sprague, Marcy, Landy, Fernback & Smythe, (John P. Drenning and Charles P. Jacobs, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether payments under petitioner's lease of computers and ancillary equipment are exempt from the imposition of sales and use taxes under the Tax Law because said computers and equipment are used directly and predominantly in the production of tangible personal property.

FINDINGS OF FACT

1. Petitioner, on June 24, 1977, timely filed its application for refund of sales and use taxes paid by petitioner in the amount of \$58,771.86 on the

lease of computers and ancillary equipment between February 1, 1975 and December 31, 1976. Petitioner claimed that the computers and equipment were used directly and predominantly in the production of tangible personal property.

2. On August 10, 1977, the Audit Division denied petitioner's application on the basis that the computer use was not "directly" in production.

3. The letter of denial of petitioner's application utilizes the language of regulations -- adopted on May 12, 1977 and effective on June 1, 1977 -- in denying the application for failure of the computers to be used "directly" in the production of tangible personal property (20 NYCRR 528.13(c)(1)).

4. Petitioner's computers constitute the information control for the production process, to wit: the computers direct the production process indirectly by analyzing all jobs to be done, deadlines for completion, parts and manpower availability and status of production equipment. Such analysis determines which jobs are to be done, in what sequence and with which parts, for which customer, by what time, and on which machines operated by which employees.

5. Petitioner's computers were used in excess of 50 percent of the time during the period at issue for production-related activities including the activities of others to whom petitioner made computer time and information available.

6. Petitioner's computers are located directly on petitioner's premises with the production plant, equipment, parts and personnel.

7. Petitioner's computers carry on the functions and duties of what would otherwise have been done by many people over a much longer time and perhaps not as effectively.

8. Petitioner's computers are in essence responsible for the smooth and efficient operation of petitioner's production process.

9. Petitioner's computers do not act directly on or operate the production machinery. The main function of the computers is to provide information or direction to management or workers.

10. Petitioner relied upon the case Niagara Mohawk Power Corporation v. Wanamaker, 286 A.D. 446, Aff'd. 2 NY 2d 764, in support of its position that the computers and ancillary equipment were used directly in the production of tangible personal property.

CONCLUSIONS OF LAW

A. That during the period at issue section 1115(a)(12) of the Tax Law exempted machinery or equipment used or consumed "directly" and predominantly in the production of tangible personal property for sale.

B. That the policy of the State Tax Commission, regarding section 1115(a)(12) of the Tax Law has always been consistent and is affirmed in its current regulations. Regulation 20 NYCRR 528.13(c)(1) provides directly means the machinery or equipment must, during the production phase of a process, (i) act upon or effect a change in material to form the product to be sold, or (ii) have an active causal relationship in the production of the product to be sold, or (iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or (iv) be used to place the product to be sold in the package in which it will enter the stream of commerce.

C. That the computers and ancillary equipment of petition which analyze and produce production schedules are not used directly in the production process.

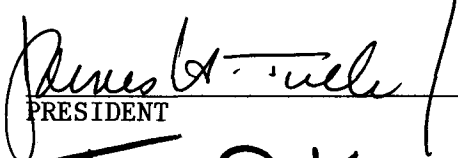
D. That petitioner mistakenly relied on Niagara Mohawk Power Corporation v. Wanamaker (286 A.D. 446, Aff'd 2 NY 2d 764) in that its computers had no intimate nexus with the actual production operation. (Rochester Independent Packer, Inc., v. Heckelman 83 Misc. 2d 1064, 374 NYS 2d 991.)

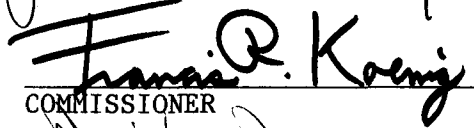
E. That the petition of Moog, Inc. is denied in all respects and the denial of the refund claim by the Audit Division is sustained.

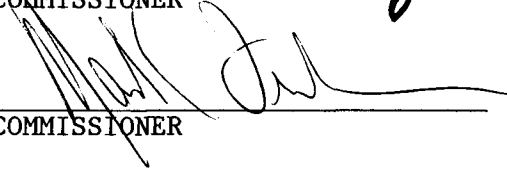
DATED: Albany, New York

JUN 2 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER