

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

February 11, 1983

Castomatic, Division Arwood Corp.  
Rockleigh Industrial Park  
Rockleigh, NJ 07647

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 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  
John E. Antholis  
Edwards and Antholis  
475 Fifth Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

CASTOMATIC, DIVISION OF ARWOOD CORP.

DECISION

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 March 1, 1975  
through February 28, 1978.

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Petitioner, Castomatic, Division of Arwood Corp., Wavel Street, Syracuse, New York 13206 (now located at Rockleigh Industrial Park, Rockleigh, New Jersey 07647), 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 March 1, 1975 through February 28, 1978 (File No. 28148).

Petitioner filed a waiver of a small claims hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing record. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether maintenance and repair services purchased by petitioner in conjunction with the performance of machine-tooled parts manufacturing contracts were subject to sales and use taxes.

FINDINGS OF FACT

1. On June 8, 1978, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Castomatic, Division of Arwood Corp., in the amount of

\$12,603.28, plus penalty of \$2,683.07 and interest of \$2,667.57, for a total due of \$17,953.92 for the period March 1, 1975 through February 28, 1978.

2. Petitioner contested only that portion of the assessment which subjected the purchases of certain repair services to use tax amounting to \$15,531.25.

On audit, the auditor determined additional tax due of \$20,422.08 and allowed a credit of \$7,818.80 leaving the net amount of the assessment at \$12,603.28.

3. Petitioner manufactures precision machine-tooled parts. As part of the manufacturing process, petitioner designs and builds tools and dies (tooling) according to customer's specifications to be used to produce the final product. Under the terms and conditions upon which petitioner manufactures the parts, as set forth in its Acknowledgement of Purchase Order, all tooling paid for by the customer is used exclusively for the benefit of that customer. Petitioner maintains the tooling in good working condition and produces parts from the tooling for as long as the tooling remains in its possession. Part of the costs of the dies and tooling are borne by petitioner in addition to necessary maintenance costs. As a result, petitioner requires that tooling remain in its possession and control and are not removable unless petitioner agrees in writing. The customer, however, according to petitioner's promotional brochure, has title to the tooling. When a customer has failed to order castings made from dies for three consecutive years, petitioner may, upon 30 days' notice, dispose of the tooling.

4. As part of the sales price of the tooling, petitioner agreed to maintain the tooling in good working order at its own expense. In fulfilling this maintenance obligation, petitioner subcontracted the maintenance and

repair services to an independent contractor. Petitioner was billed monthly for these services by the independent contractor.

5. On audit, the Audit Division determined that the costs of the subcontracted tooling repairs were taxable maintenance charges. At the hearing, petitioner showed that the maintenance services in issue were services provided pursuant to a warranty covering sale of the tooling and thus the payments made to the subcontractor were not taxable because the services were for resale.

#### CONCLUSIONS OF LAW

A. That during the period in issue, section 1105(c)(3) of the Tax Law imposed a tax on the services of maintaining, servicing, or repairing tangible personal property, unless the property was held for sale in the regular course of business.

B. That, inasmuch as title to the tooling passed to the customer as part of the contract, the transactions were sales of property in the regular course of business by petitioner notwithstanding the fact that the tooling remained in petitioner's possession.

C. That 20 NYCRR 527.5(d)(4) provides that if "a manufacturer reimburses a vendor or repairman performing warranty work, the reimbursement is not taxable, as it was for resale." Since petitioner was required by the contract to provide maintenance and repair services to the tooling sold to its customers, the maintenance and repair services which it subcontracted were sales of services for resale within the meaning and intent of section 1105(c)(3) of the Tax Law and 20 NYCRR 527.5(d)(4) and thus not subject to tax (See Matter of Oberdorfer Foundries, Inc., State Tax Commission, August 13, 1976).

D. That the petition of Castomatic, Division of Arwood Corp. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 8, 1978 is to be modified accordingly.

DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION

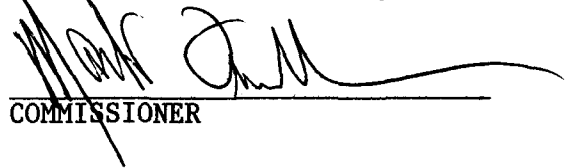
ACTING PRESIDENT

A handwritten signature in dark ink, appearing to read "Robert B. Buehler", written over a horizontal line.

COMMISSIONER

A handwritten signature in dark ink, appearing to read "Francis R. Koong", written over a horizontal line.

COMMISSIONER

A handwritten signature in dark ink, appearing to read "Mark J. [unclear]", written over a horizontal line.

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Castomatic, Division Arwood 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 Period:  
3/1/75-2/28/78.

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State of New York  
County of Albany

David Parchuck, 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 February, 1983, he served the within notice of Decision by certified mail upon Castomatic, Division Arwood Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Castomatic, Division Arwood Corp.  
Rockleigh Industrial Park  
Rockleigh, NJ 07647

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 February, 1983.

David Parchuck

Quinn Arndt

**AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174**

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Castomatic, Division Arwood Corp. : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
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State of New York  
County of Albany

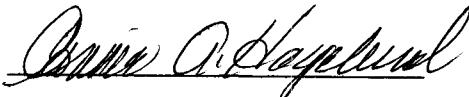
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of February, 1983, he served the within notice of Decision by certified mail upon John E. Antholis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John E. Antholis  
Edwards and Antholis  
475 Fifth Ave.  
New York, NY 10017

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 February, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

**P 389 758 568**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Castomatic, Division Arwood Corp.</i>	
Street and No. <i>Rockleigh Industrial Park</i>	
P.O., State and ZIP Code <i>Rockleigh, NJ 07647</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982

**P 389 758 569**  
**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED—  
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>John E. Antholis</i>	
Street and No. <i>Edwards and Antholis</i>	
P.O., State and ZIP Code <i>475 Fifth Ave.</i>	
P.O., State and ZIP Code <i>New York, NY 10017</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
<b>TOTAL Postage and Fees</b>	<b>\$</b>
Postmark or Date	

PS Form 3800, Feb. 1982