

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
C & R Oil & Gas Corp.

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Sales & Use Tax
under Article 28 & 29 of the Tax Law for the
Period 12/1/73 - 2/29/80.

:

:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of February, 1985, he served the within notice of Decision by certified mail upon C & R Oil & Gas Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

C & R Oil & Gas Corp.
184 East Union St.
Allegany, NY 14760

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
15th day of February, 1985.

David Parchuck

Bonnie A. Hayden

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
C & R Oil & Gas Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 12/1/73 - 2/29/80. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of February, 1985, he served the within notice of Decision by certified mail upon J. Michael Shane, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

J. Michael Shane
Shane & Franz
125 South Union St., P.O. Box 468
Olean, NY 14760

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
15th day of February, 1985.

David Parchuck

James A. Nagahm

Authorized to administer oaths
pursuant to Tax Law section 174

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

February 15, 1985

C & R Oil & Gas Corp.
184 East Union St.
Allegany, NY 14760

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
J. Michael Shane
Shane & Franz
125 South Union St., P.O. Box 468
Olean, NY 14760
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
C & R OIL & GAS CORPORATION	:	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 December 1, 1973	:	
through February 29, 1980.	:	

Petitioner, C & R Oil & Gas Corporation, 184 East Union Street, Allegany, New York 14760, 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 December 1, 1973 through February 29, 1980 (File No. 38975).

A small claims hearing was held before Richard L. Wickham, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on September 20, 1984 at 1:30 P.M. Petitioner appeared by J. Michael Shane, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether the retail purchases by petitioner of radio equipment, heavy construction equipment and the services of repairing the heavy construction equipment, are exempt from the retail sales tax and the compensating use tax pursuant to section 1115(a)(12) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, C & R Oil & Gas Corporation, drills and produces oil and gas wells in western New York and northwestern Pennsylvania. For the period under review, petitioner operated as a contract driller, drilling wells for

others. At present, it operates the wells that it drills. Since its inception, petitioner has been family owned and operated. It has 19 employees.

2. On August 27, 1982, as the result of an audit, the Audit Division issued against petitioner notices of determination and demand for payment of sales and use taxes due numbered S820827146C and S820827147C. Said notices covered the period December 1, 1973 through February 29, 1980 and assessed an aggregate tax due of \$26,010.43 plus penalty and interest.

3. Prior to the hearing, the parties reached an agreement whereunder the tax due assessed in the aforesaid notices was revised to \$16,710.31. At the hearing, petitioner conceded that \$2,457.07 of the revised tax due attributable to recurring purchases [\$1,478.82] and purchases of diesel fuel [\$978.25] was properly assessed. The amount in dispute is \$14,253.24 which represents the tax assessed on the retail purchases of the petitioner of radio equipment, heavy construction equipment and services to repair the construction equipment.

4. During the period December, 1973 through February, 1980, petitioner purchased a Motorola radio system, replacement radios and walkie talkies at a cost of \$131,664.03. The radio system had extended capabilities including the capability to remotely control the pumps on the wells, but was primarily used for voice communication. Said message transmissions normally pertained to equipment failures or emergencies due to personal injuries at the drill site or the unexpected "blow-out" of a well. The radios which petitioner installed in its corporate office at 184 East Union Street, Allegany, New York, the homes of family members, corporate vehicles and at the job site locations were exclusively used for business purposes.

5. Prior to the actual drilling of an oil or gas well, roads must be constructed in order to get the personnel and drilling equipment to the drill

site and the drill site must be readied for drilling operations. Thereafter, the roads must be maintained to allow service vehicles access to the drill site and the drill site cleared of drill cuttings.

6. During the audit period, petitioner purchased two D-8 bulldozers at a cost of \$16,000.00. The bulldozers cut the access roads, built and lined the pits at the drill sites, removed the drilling equipment from lowboys and other transportation vehicles, pulled the drilling equipment to the drill sites, pushed said equipment into position and assisted the service vehicles in entering and exiting from the drill sites, particularly under foul conditions.

7. Petitioner purchased two Caterpillar scrapers and one Galion grader at a cost of \$5,500.00. The apparent use for the scrapers and grader was cutting and grading the two access roads¹ in the original construction phase of site development and the grading of said roads under a regular maintenance program.

8. In 1980 petitioner purchased a winch for attachment to a bulldozer at a cost of \$2,050.00. Said winch pulled through muddy access roads those vehicles which were unable to reach a drill site under the vehicle's own power and which a bulldozer could not push because the vehicle lacked appropriate pushing devices.

9. Petitioner purchased at a cost of \$23,500.00 two backhoes mainly for casing off surface water before a drill casing was placed in a hole in the ground. The backhoes also removed debris (small rock pieces) which came from the hole drilled in the ground, trenched openings for the installation of sluess pipes in the access roads, lifted malfunctioning production equipment

1 Two access roads were normally constructed from the public highway to a drill site. Heavy materials were hauled over one road and lighter materials such as pick-up trucks and service vehicles travelled upon the second road.

onto service vehicles for removal and repair at a service center and lifted onto trucks that piping remaining at the drill site after the completion of an oil or gas well.

10. At the hearing, petitioner did not make known the amount of time that the specific heavy construction equipment was used performing the individual tasks as described in Findings of Fact "6" through "9". It is not known whether petitioner maintained cost records which disclosed this type of information.

11. On audit of petitioner's books and records, the auditor for the Audit Division determined that repairs were made to the heavy construction equipment described above at a cost of \$17,823.11. Due to accounting errors on the part of the petitioner, postings in the total amount of \$14,468.36 to the repair account actually represent the purchase of parts for a Joy booster compressor (\$11,163.80) and the purchase of parts and a track for a bulldozer (\$3,304.56). The Audit Division conceded that since the Joy booster compressor was used directly in the production phase of producing an oil or gas well, tax on the amount of \$11,163.80 was to be excluded from the assessment.

CONCLUSIONS OF LAW

A. That section 1115(a)(12) of the Tax Law currently exempts from the retail sales tax and the compensating use tax:

"Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property (and) gas...for sale, by...extracting, ...but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery (or) equipment... This exemption shall include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas, and solution mining activities to the point of sale to the first commercial purchaser."

B. That section 1115(a)(12) of the Tax Law was amended to include "all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas and solution mining activities to the point of sale to the first commercial purchaser" by Chapter 846 of the Laws of 1981. Said amendment became effective on August 26, 1981. Its effect was prospective only and accordingly was not applicable to the period at issue. (Matter of Envirogas, Inc., State Tax Commission, November 22, 1984).

C. That 20 NYCRR 528.13(b)(1)(ii) defines the term "production" to include:

"the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale."

D. That 20 NYCRR 528.13(b) defines "directly" as follows:

"(1) '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.

(2) Usage in activities collateral to the actual production process is not deemed to be used directly in production."

E. That the radio equipment and heavy construction equipment which petitioner purchased is not used "directly" in production within the meaning of Tax Law section 1115(a)(12) and regulation section 20 NYCRR 528.13. They lack

a sufficient intimate nexus with the production process (See Rochester Independent Packer, Inc. v. Heckelman, 83 Misc.2d 1064; Matter of Envirogas, Inc., (supra)).

F. That the exemption provided in section 1115(a)(12) of the Tax Law is applicable to machinery and equipment and parts purchased therefor. The exemption does not extend to the services of maintaining, repairing or servicing said machinery or equipment.

G. That the petition of C & R Oil & Gas Corporation is granted to the extent provided in Findings of Fact "3" and "11". The Audit Division is hereby directed to accordingly modify the notices of determination and demand for payment of sales and use taxes due issued August 27, 1982. Except as so granted, the petition is in all other respects denied.

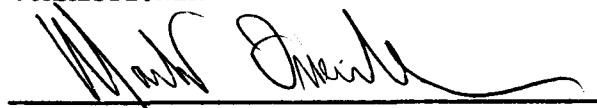
DATED: Albany, New York

STATE TAX COMMISSION

FEB 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 169 590

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517	Sent to	<i>J. Michael Shane</i>	
	Street and No.	<i>Shane & Family</i>	
	P.O., State and ZIP Code	<i>125 S Union St.</i>	
	Postage	<i>P.O. Box 468</i>	
	Certified Fee	<i>Clear NY 14760</i>	
	Special Delivery Fee		
	Restricted Delivery Fee		
	Return Receipt Showing to whom and Date Delivered		
	Return receipt showing to whom, Date, and Address of Delivery		
	TOTAL Postage and Fees	\$	
PS Form 3800, Feb. 1982	Postmark or Date		

P 693 169 589

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517	Sent to	<i>C. E. R Oil & Gas Corp</i>	
	Street and No.	<i>184 E Union St</i>	
	P.O., State and ZIP Code	<i>Allegheny NY 14760</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		
	TOTAL Postage and Fees	\$	
PS Form 3800, Feb. 1982	Postmark or Date		