

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Reactor Controls, Inc. :  
Northeast Services Division : 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 :  
9/1/78-11/30/81. :

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State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Reactor Controls, Inc., Northeast Services Division, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Reactor Controls, Inc.  
Northeast Services Division  
5854 Butternut Dr.  
E. Syracuse, NY 13057

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  
18th day of February, 1986.

Doris E. Steinhardt

John Coughlin  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of	:	
Reactor Controls, Inc.	:	
Northeast Services Division	:	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 9/1/78-11/30/81.	:	

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State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he served the within notice of Decision by certified mail upon Joseph C. Watt, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Joseph C. Watt  
500 S. Salina St.  
Syracuse, NY 13202

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  
18th day of February, 1986.

Doris E. Steinhardt

  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 18, 1986

Reactor Controls, Inc.  
Northeast Services Division  
5854 Butternut Dr.  
E. Syracuse, NY 13057

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  
Joseph C. Watt  
500 S. Salina St.  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	DECISION
REACTOR CONTROLS, INC., NORTHEAST	:	
SERVICES DIVISION	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 & 29	:	
of the Tax Law for the Period September 1, 1978	:	
through November 30, 1981.	:	

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Petitioner Reactor Controls, Inc., Northeast Services Division, 5854 Butternut Drive, East Syracuse, New York 13057 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 September 1, 1978 through November 30, 1981 (File No. 41665).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 16, 1984 at 10:45 a.m. with all briefs to be submitted by August 23, 1985. Petitioner appeared by James C. Watt, Jr., Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of Counsel).

ISSUE

I. Whether certain equipment and expense purchases were exempt from sales and use taxes under section 1115(a)(12) of the Tax Law.

II. Whether materials used by petitioner in the performance of a contract with Niagara Mohawk Power Corporation were exempt from sales and use taxes under section 1115(a)(12) of the Tax Law.

III. Whether the Audit Division's assessment of additional tax due for the period September 1, 1978 through November 30, 1979 was issued beyond the statute of limitations.

FINDINGS OF FACT

1. Petitioner, Reactor Controls, Inc., Northeast Services Division, was engaged in the following business activities during the period at issue: One was as a consultant on electrical power generation with primary emphasis on nuclear power; a second was producing various items such as pipe hangers and rings for use in power generation as well as other areas of manufacturing; and a third was construction, retrofitting, maintenance and betterment work at nuclear power facilities.

2. On October 20, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1978 through November 30, 1981 for taxes due of \$22,885.79, plus interest of \$5,135.79, for a total of \$28,021.58.

3. Petitioner did not file sales tax returns for the periods September 1, 1978 through November 30, 1979.

4. The audit conducted by the Audit Division disclosed no additional sales taxes due. However, an examination of purchase invoices revealed use taxes due as follows:

(a) fixed assets	\$16,284.26
(b) expense purchases	3,714.83
(c) materials incorporated into capital improvements	2,886.70
	<u>\$22,885.79</u>

Petitioner agreed to and paid \$5,287.53 which represented \$3,988.23 in fixed assets and \$1,304.12 in expense purchases that were attributable to the environmental engineering phase of petitioner's business. The remaining taxes in dispute amounted to \$17,598.44.

5. The fixed assets (\$12,301.03) consisted of machinery and equipment used by petitioner to produce items of tangible personal property. Expense

purchases (\$2,410.71) were supplies and repairs consumed by petitioner in this phase of the business operations. The Audit Division took the position that petitioner was a fabricator and contractor and as such the foregoing purchases did not qualify for the exemption provided under sections 1115(a)(12) and 1210(a)(1) of the Tax Law. Petitioner on the other hand maintained that it was a manufacturer and/or assembler of tangible personal property, as such terms are defined in the regulations and, accordingly, the purchases of fixed assets and expenses qualify for the exemption afforded under Section 1115(a)(12) of the Tax Law.

6. The materials referred to in Finding of Fact "4"(c) were installed as part of a construction project for Niagara Mohawk Power Corporation. The contract provided that petitioner furnish, fabricate, deliver and install piping materials and equipment at Nine Mile Point Nuclear Station. Niagara Mohawk furnished petitioner with a Certificate of Capital Improvement. Petitioner's contract involved the construction of a Dow Radwaste System. This system removed radioactive materials and permitted the safe production of electrical power. The type of materials that the Audit Division held taxable were construction materials and supplies consumed in the performance of the contract.

7. With respect to the materials, petitioner took the position that the Radwaste System was an integral part of the production of electricity and therefore the purchases used to construct the system were exempt under section 1115(a)(12) of the Tax Law. The Audit Division maintained that the purchases it determined to be taxable were materials incorporated into a capital improvement rather than production equipment.

8. During the period under audit, the major items produced by petitioner were piping, pipe hangers and torus saddles, all of which were utilized in the

field of nuclear power. Petitioner usually made items to the specifications and drawings furnished by the customer. The process involved taking material from inventory, usually steel, and cutting, burning, welding, bending and shaping such material into the desired product.

9. Petitioner produced approximately 30 to 40 percent of its products for sale. The remainder were used or installed by petitioner or by a subcontractor in construction projects.

#### CONCLUSIONS OF LAW

A. That section 1115(a)(12) of the Tax Law provides an exemption from sales and use taxes for "(m)achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property... for sale, by manufacturing..., but not including supplies used in connection with such machinery, equipment or apparatus...".

B. Machinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process [20 NYCRR 528.13(c)(4)].

C. That the New York State Sales and Use Tax Regulations at Sec. 531.2(b), (c) and (d) define the following terms:

"(b) Manufacturing. Manufacturing is the production of tangible personal property that has a different identity from its ingredients. Manufacturing includes the production of standardized items as well as the production of items to a customer's specifications.

\* \* \*

(c) Assembling. Assembling is the coupling or the uniting of parts or materials as a manufacturing process or as a step in the manufacturing process which results in a new product.

\* \* \*

(d) Fabrication. Fabrication is the alteration or modification of a manufactured product without a change in the

identity of the product. Fabrication includes cutting, perforating and similar operations..."

D. That petitioner produced various items of tangible personal property that had different identities from their ingredients. Accordingly, petitioner was a manufacturer. Petitioner was also a contractor that installed its manufactured products in the performance of construction contracts with utility companies. The manufactured items when installed constituted capital improvements to real property. Since only 30 to 40 percent of its manufactured goods were produced for sale as opposed to consumed or used in capital improvement work, petitioner's machinery and equipment was not used predominantly in production within the meaning and intent of section 1115(a)(12) of the Tax Law. Therefore, the purchases of machinery and equipment were subject to the taxes imposed under sections 1105(a) and 1110 of the Tax Law. Likewise, the expense purchases were taxable.

E. That section 1101(b)(4) of the Tax Law specifically provides that a sale of any tangible personal property to a contractor for use or consumption in erecting structures or buildings, or otherwise adding to or improving real property is deemed to be a retail sale.

F. That it has been held that the term "equipment", as used in section 1115(a)(12) of the Tax Law, means having an identifiable character as equipment at the time of purchase at retail which is adapted by its design to perform in conjunction with machinery or otherwise, have some particular function in a stage of the manufacturing process (Slattery Associates, Inc., v. Tully, 54 NY 2d 711). The construction materials at issue herein clearly did not possess the requisite "identifiable character," as machinery or equipment at the time of their purchase. Accordingly, petitioner's purchases of the materials constituted



a retail sale and was subject to the tax imposed under section 1105(a) of the Tax Law.


G. That section 1147(b) of the Tax Law provides that an assessment of additional tax may be issued at any time where no return has been filed as required by law. Since petitioner did not file sales tax returns for the period September 1, 1978 through November 30, 1979 the notice of additional tax due issued on October 20, 1982 was timely.


H. That the petition of Reactor Controls, Inc., Northeast Services Division, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 20, 1982, as revised by the payment of \$5,287.53, is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 18 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 684 313 458

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

Sent to	<i>Joseph A. Watt</i>	
Street and No.	<i>605 S. Selma St</i>	
P.O., State and ZIP Code	<i>Syracuse NY 13202</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	\$	
Postmark or Date		

P 684 313 457

## RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

PS Form 3800, Feb. 1982

★ U.S.G.P.O. 1983-403-517

Sent to	<i>Kearney Controls Inc.</i>	
Street and No.	<i>Northwest Service Rd</i>	
P.O., State and ZIP Code	<i>5854 Bulkmurt Dr. Syracuse NY 13057</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	\$	
Postmark or Date		

TA-36 (9/76)

State of New York - Department of Taxation and Finance  
Tax Appeals BureauREQUEST FOR BETTER ADDRESS

Tax Appeals Bureau Requested Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 3/6/86
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec. 2/18/86
Name <i>Reactor Controls, Inc.</i>	
Address <i>Northeast Services Division 5854 Butternut Dr. E. Syracuse, N.Y. 13057</i>	

## Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	<i>Undeliverable as addressed</i>

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (7/85)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
W. A. Harriman Campus  
ALBANY, N.Y. 12227

**CERTIFIED**

P 684 313 457

**MAIL**

08317

Reactor Controls, Inc.  
~~Northeast Services Division~~  
~~5854 Butternut Dr.~~  
~~E. Syracuse, NY 13057~~



*Handwritten:*  
4151  
J. J. J.  
33477



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

February 18, 1986

Reactor Controls, Inc.  
Northeast Services Division  
5854 Butternut Dr.  
E. Syracuse, NY 13057

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Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Joseph C. Watt  
500 S. Salina St.  
Syracuse, NY 13202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	DECISION
REACTOR CONTROLS, INC., NORTHEAST SERVICES DIVISION	:	
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 & 29 of the Tax Law for the Period September 1, 1978 through November 30, 1981.	:	

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a retail sale and was subject to the tax imposed under section 1105(a) of the Tax Law.

G. That section 1147(b) of the Tax Law provides that an assessment of additional tax may be issued at any time where no return has been filed as required by law. Since petitioner did not file sales tax returns for the period September 1, 1978 through November 30, 1979 the notice of additional tax due issued on October 20, 1982 was timely.

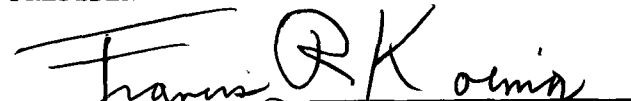
H. That the petition of Reactor Controls, Inc., Northeast Services Division, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 20, 1982, as revised by the payment of \$5,287.53, is sustained.

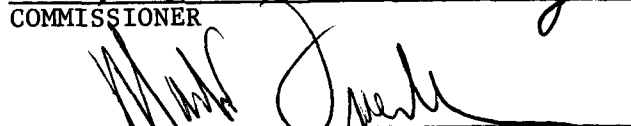
DATED: Albany, New York

STATE TAX COMMISSION

FEB 18 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER