

1998

Yeargin, Inc. v. Utah State Tax Commision : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Gale K. Francis; Assistant Attorney General; Attorneys for Appellees.

Robert A. Peterson; Giauque, Crockett, Bendinger & Peterson; Attorneys for Appellant.

Recommended Citation

Brief of Appellant, *Yeargin, INC. v. Utah State Tax Commision*, No. 981342 (Utah Court of Appeals, 1998).
https://digitalcommons.law.byu.edu/byu_ca2/1692

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

DOCKET NO. 981542-CA

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

IN THE UTAH COURT OF APPEALS

YEARGIN, INC.,)	
	)	COURT OF APPEALS
Plaintiff and Appellant,	)	No. 981342-CA
)	
vs.	)	TAX COMMISSION APPEAL
	)	NO. 93-0002
UTAH STATE TAX COMMISSION,)	
STATE OF UTAH,	)	TRIAL COURT NO. 970903133CV
)	
Defendants and Appellees.)	

APPELLANT'S OPENING BRIEF

APPEAL FROM THE UTAH STATE TAX COMMISSION

PRIORITY CLASSIFICATION NO. 14

Robert A. Peterson, Esq. (#2589)
GIAUQUE, CROCKETT,
BENDINGER & PETERSON
170 South Main Street, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 533-8383
Attorneys for Appellant

Gale K. Francis
Assistant Attorney General
160 East 300 South, #500
Salt Lake City, Utah 84114
Attorneys for Appellees

TABLE OF CONTENTS

	<u>Page</u>
JURISDICTION	1
ISSUES FOR APPEAL	1
APPLICABLE STATUTES, RULES AND REGULATIONS	2
STATEMENT OF THE CASE	2
A. Proceedings Below	2
B. Facts Below	3
SUMMARY OF ARGUMENT	6
ARGUMENT	8
I. The Controlling Contract Between WECCO and Yeargin Precludes Yeargin From Taking Title To Any Materials For The AP Facility, And There Is Therefore No Basis For Imposing Sales Tax On Yeargin	8
A. The WECCO Contract Unambiguously Gave Title To All Materials From Suppliers Directly To WECCO, Not Yeargin	9
B. All Of The Testimony On the WECCO Contract Supports Yeargin's Position: Title To Materials Never Rested In Yeargin	10
C. Because The WECCO Contract Unambiguously Precluded Yeargin From Having Title To Materials, The Auditing Division Had But Did Not Meet The Burden Of Proving Departures From The WECCO Contract Sufficient To Support Over \$67,000 In Tax Assessments	11

1.	Summary Testimony By An Auditor Does Not Show That The Assessment Was Accurate	12
2.	The Auditing Division's Exhibits Can Only Show De Minimis, If Any, Tax Liability -- Not The More Than \$67,000 Claimed By The Auditing Division	13
D.	It Is Not Possible That Yeargin Took Title To Materials And Supplies "After" They Were Delivered To The Project	16
E.	Whether The Principal/Agent Relationship Of Yeargin And WECCO Was Disclosed At All Times To All Parties Is Irrelevant To This Case	17
II.	Pursuant To The April 1994 Stipulation, Yeargin Can Have No Sales Tax Liability In Connection With The WECCO Project	19
A.	The 1994 Stipulation Is Unambiguous And Plainly Precludes Yeargin's Liability For Sales Tax	21
B.	Even If The 1994 Stipulation Were Ambiguous, The Only Evidence As To Meaning Unequivocally Supports Yeargin	24
C.	The Tax Commission Was Required To Make Findings Consistent With The Terms Of the 1994 Stipulation	25
III.	The Tax Commission Improperly And Without Adequate Cause Vacated A Binding Stipulation Between The Parties	26
A.	The April 1994 Stipulation Of Facts Is Valid And Binding	27

B.	Because The Auditing Division Neither Sought Nor Obtained Relief From The 1994 Stipulation, The 1994 Stipulation Determines All Facts Material To This Litigation	28
1.	The Auditing Division Never Moved For Relief From the 1994 Stipulation	29
2.	Even If A Motion For Relief Had Been Made, There Are No Grounds For Relief	30
3.	Even If The Auditing Division Had Moved For Relief, The Request Should Have Been Denied As Untimely And Prejudicial	33
C.	The Tax Commission's Failure To Enforce The 1994 Stipulation Fails Every Test For Proper Relief From A Stipulation and Was Improper	35
	RELIEF REQUESTED	36

TABLE OF AUTHORITIES

CASES	<u>Page</u>
<u>Alta Pacific Assocs. v. Tax Commission,</u> 931 P.2d 103 (Utah 1997)	1, 2
<u>Bonner v. Oklahoma Rock Corp.,</u> 863 P.2d 1176 (Okla. 1993)	27, 28, 30
<u>C.M. Showroom, Inc. v. Boes,</u> 933 P.2d 793 (Kan. App. 1997)	25, 27
<u>Citicorp Services, Inc. v. Lee,</u> 665 P.2d 265 (Nev. 1983)	29
<u>Coalville City v. Lundgren,</u> 930 P.2d 1206 (Utah App. 1997)	21
<u>Cummings v. Jorgenson,</u> 480 P.2d 466 (Utah 1971)	18
<u>DLB Collection Trust v. Harris,</u> 893 P.2d 593 (Ut. App. 1995)	35
<u>Dove v. Cude,</u> 710 P.2d 170 (Utah 1985)	26, 27, 28, 29, 30, 31, 33, 35
<u>Evans & Sutherland Computer Corp. v.</u> <u>Utah State Tax Commission, et al.,</u> 953 P.2d 435 (Utah 1997)	3
<u>First of Denver Mortgage Investors v. Zundel,</u> 600 P.2d 521 (Utah 1979)	27

<u>Garland v. Fleischman,</u> 831 P.2d 107 (Utah 1992)	17, 18
<u>Higley v. McDonald,</u> 685 P.2d 496 (Utah 1984)	25, 26, 27, 28
<u>IFG Leasing Co. v. Godon,</u> 776 P.2d 607 (Utah 1989)	21
<u>Johnson v. Peoples Finance & Thrift Co.,</u> 272 P.2d 171 (Utah 1954)	33
<u>Nanonka v. Hoskins,</u> 645 P.2d 507 (Okla. 1982)	27
<u>Norris v. Norris,</u> 727 P.2d 115 (Ore. 1986)	29
<u>Plateau Mining Co. v. Utah Division of State Lands,</u> 802 P.2d 720 (Utah 1990)	8
<u>State v. Velasquez,</u> 672 P.2d 1254 (Utah 1983)	27, 28, 29, 30, 32, 33
<u>Thorup Brothers Const. v. Auditing Division,</u> 860 P.2d 324 (Utah 1993)	16
<u>USI Properties East, Inc. v. Simpson,</u> 938 P.2d 168 (Colo. 1997)	21, 30
<u>Utah Valley Bank v. Tanner,</u> 636 P.2d 1060 (Utah 1981)	8
<u>Winegar v. Froerer Corp.,</u> 813 P.2d 104 (Utah 1991)	8

STATUTES

Utah Code Ann. section 59-1-601	3
---------------------------------------	---

IN THE UTAH COURT OF APPEALS

YEARGIN, INC.,)	
	)	COURT OF APPEALS
Plaintiff and Appellant,	)	No. 981342-CA
)	
vs.	)	TAX COMMISSION APPEAL
	)	NO. 93-0002
UTAH STATE TAX COMMISSION,)	
STATE OF UTAH,	)	TRIAL COURT NO. 970903133CV
)	
Defendants and Appellees.)	

APPELLANT'S OPENING BRIEF

APPEAL FROM THE UTAH STATE TAX COMMISSION

PRIORITY CLASSIFICATION NO. 14

Robert A. Peterson, Esq. (#2589)
GIAUQUE, CROCKETT,
BENDINGER & PETERSON
170 South Main Street, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 533-8383
Attorneys for Appellant

Gale K. Francis
Assistant Attorney General
160 East 300 South, #500
Salt Lake City, Utah 84114
Attorneys for Appellees

JURISDICTION

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code sections 63-46b-16, as amended, and 78-2-2(4). This matter was poured over to the Court of Appeals by order of the Supreme Court, dated June 25, 1998.

ISSUES FOR APPEAL

First, in circumstances in which a controlling contract between Yeargin, Inc. ("Yeargin") and WECCO¹ stipulated that title to materials would be passed from suppliers directly to WECCO as owner, was the burden on the Auditing Division of the Tax Commission ("Auditing Division") to prove any exceptions they claimed to that contractual provision? Under the Utah Supreme Court's decision in Alta Pacific Assocs. v. Utah Tax Commission, 931 P.2d 103 (Utah 1997), the Court should give some deference to the findings of the Tax Commission because this is a mixed question of fact and law, but should accord less deference to the findings of the Tax Commission than it would under the substantial evidence standard. This issue was preserved by the proceeding before the Tax Commission. See, e.g., Transcript at 17, 115.²

¹ WECCO (Western Electrochemical Company), as further described at pp. 3-5, infra, is the owner of the ammonium percholate facility whose construction gave rise to this action. Ammonium percholate is a critical ingredient of rocket fuels. Yeargin was engaged by WECCO to procure supplies and materials for construction by WECCO of its new AP facility in Utah.

² Citations to the Transcript of the March 13, 1997 Hearing before the Tax Commission are in the form page number followed by line number. Thus, Tr. pg. 80:9-21 cites to page 80, lines 9 through 21. A copy of the Transcript is submitted herewith as part of Appellant's Addendum. The Transcript is the subject of a pending Motion to Correct Record and has not yet been numbered by the Tax Commission.

Second, did Yeargin purchase the materials in question for its own account or as agent for WECCO? This is a mixed question of fact and law. Because this is a mixed question of fact and law, the same standard of review applies here as applies to the second issue above. This issue is preserved for appeal as it is the subject of the Tax Commission proceedings.

Finally, may the Appellee Auditing Division repudiate, on the eve of trial, a stipulation of facts entered into three years before with Appellant Yeargin? This is a question of law, and the Tax Commission's determination is therefore entitled to no deference (the Court reviews this question *de novo*). Alta Pacific Assocs., *supra*, 931 P.2d 103. This issue was preserved by Yeargin's Motion in Limine prior to the Tax Commission hearing and by objection at trial. See, e.g., Tr. pg. 11; Memorandum of Points and Authorities Submitted in Support of Motion in Limine (Record, 268).

APPLICABLE STATUTES, RULES AND REGULATIONS

This appeal does not require determinative application of any provisions of the Utah Constitution or Code. Instead, this appeal is concerned primarily with interpretation and application of case authority and provisions of a contract and a stipulation.

STATEMENT OF THE CASE

A. Proceedings Below.

Yeargin appeals from the "Findings of Fact, Conclusions of Law and Final Decision" ("Final Decision") of the Utah State Tax Commission entered April 14, 1997,

in the matter entitled Yeargin Inc. & Western Electrochemical v. Auditing Division of the Utah State Tax Commission, Appeal No. 93-0002, Account No. H02516. Yeargin timely filed a Complaint and Petition for Review by Trial De Novo of the Final Decision of State Tax Commission in the Third Judicial District Court of Salt Lake County, May 7, 1997, as provided for under Utah Code sections 59-1-601, 63-46b-13(1), 63-46B-14(3) and 63-46b-15 (1996).

In Evans & Sutherland Computer Corp. v. Utah State Tax Commission, et al., 953 P.2d 435 (Utah 1997), handed down October 7, 1997, the Utah Supreme Court declared Utah Code Ann. section 59-1-601 constitutionally invalid. Because jurisdiction in the Third District Court was predicated on this statute, Yeargin filed a Motion to Remand to The Utah State Tax Commission dated October 30, 1997, in order to preserve its rights of appeal to the Utah Supreme Court.³ On November 6, 1997, Yeargin filed a Petition for Review with the Utah Supreme Court. The Utah Supreme Court granted Yeargin's petition and the case was then poured over from the Supreme Court to the Court of Appeals on June 25, 1998.

B. Facts Below.

On May 4, 1988, Pacific Engineering and Production Company of Nevada's ("PEPCON") facility in Clark County, Nevada, was consumed by flames and explosions. At that time, PEPCON produced approximately one-half of the United States' domestic

³ The Third Judicial District Court has never ruled on Petitioner's Motion to Remand to The Utah State Tax Commission.

supply of ammonium percholate ("AP"). AP is a chemical critical to a number of national defense and space exploration programs. Unfortunately, the destruction of the Clark County facility left PEPCON without available funds with which to rebuild the AP manufacturing facility.

Realizing the critical contribution PEPCON makes toward this nation's supply of AP, contractors of the United States Department of Defense ("DOD") and the National Aeronautic's and Space Administration ("NASA") provided interim financing to PEPCON Production Inc. ("PPI"), an affiliate of PEPCON. The terms of the initial financing prohibited the expenditure of loan funds to purchase "non-severable" property or real property. Permanent financing was obtained on March 3, 1989, through Security Pacific Bank, Washington, N.A. Security Pacific Bank required that PEPCON form WECCO for the specific purposes of completing the construction of the new AP manufacturing facility and subsequent operation of that facility. Upon formation, WECCO became the owner of the AP facility under construction in Utah. All of the terms of both the initial and the permanent financing were observed.

Yeargin, through its parent company, United Engineers and Constructors, Inc. ("UE&C"), entered into a binding agreement with PPI and WECCO to provide assistance in the engineering, design, and procurement services for the construction of the new AP manufacturing facility which was being completed on an extreme fast-track basis. As part of Yeargin's functions, it assisted WECCO in purchasing materials for

use in the construction of WECCO's facility. The contract between UE&C and WECCO required that title to all materials pass directly from the suppliers to WECCO.

In September 1992, Yeargin received statutory notice of the findings of the Auditing Division regarding alleged sales and use tax liability. Statutory Notice, Respondent's Exhibit 1 (Rec. 100). The Auditing Division's Statutory Notice ("Notice") claimed a sales tax liability of \$67,827.86. Id. The Auditing Division's Notice included a summary statement of items for which tax was allegedly owed, including pipes and fittings for a fire suppression system and underground air system, trench drains and catch basins, fire hydrants, concrete, anchor bolts, 750,000 gallon water storage tank, lighting fixtures, and HCL storage tanks, among other things. Notice, Resp. Exh. 1, pgs. 7, 8, 9, 10, 11, 13 (Rec. 107, 108, 109, 110, 111, 113). Yeargin paid the Notice amount to avoid further interest charges and then timely filed a refund claim. Resp. Exh. 4 (Rec. 143).

The Auditing Division also sent deficiency notices to a number of other entities involved in the WECCO AP facility project, including WECCO, at about the same time as the Notice to Yeargin. In April 1994, after the matter had been pending for two years, all of these entities, including Yeargin, jointly entered into a stipulation of facts with the Auditing Division, a stipulation which, in pertinent part, provides:

12. During the course of construction of the facility PPI and WECCO entered into an agreement with United Engineers & Constructors, Inc. and its affiliate, Yeargin, for the purpose of providing assistance in the engineering, design and procurement for the construction of the AP manufacturing facility. United Engineers assisted WECCO in purchasing materials for use in the construction of the facility and located suppliers,

obtained price quotations and arranged for WECCO to make purchases of materials. Title to all materials purchased for use at the WECCO facility passed directly to WECCO from the suppliers.

Joint Stipulation of Facts, dated April 29, 1994 (the "1994 Stipulation"), filed May 5, 1994 with the Appeals Section, State Tax Commission. Petitioner's Exh. 2 (Rec. 86).

In March 1997, shortly before trial before the Tax Commission, the Auditing Division purported to repudiate and withdraw from the 1994 Stipulation. Following proceedings on March 13, 1997, the Tax Commission denied Yeargin's claim for a refund. This appeal timely followed.

SUMMARY OF ARGUMENT

The Tax Commission's findings are wrong as a matter of law, and are unsupported by the facts. Yeargin performed under a contract which explicitly addressed the transfer of title for all materials and equipment used in the WECCO AP facility and required that title pass directly from suppliers to WECCO. That contract clearly defined the role of Yeargin as procurement agent. It explicitly provided that title would always move directly from the suppliers to WECCO, and that transfer of title would occur on delivery to a common carrier or to the site. The contract precludes transfer of title after delivery at the site, and therefore precludes transfer on incorporation into the realty. Yeargin had no authority to purchase materials or supplies for its own account. The contract therefore precludes finding that Yeargin ever had title to materials or supplies incorporated into the AP facility, and it is therefore inconsistent

with imposing sales tax on Yeargin in connection with the construction of the WECCO AP facility.

In addition, at the heart of the Tax Commission's April 1997 Findings of Fact and Law is its disregard for a binding stipulation entered into by the parties and from which relief was never sought and could not properly have been given. Under the 1994 Stipulation, the parties agreed on facts which preclude sales tax liability by Yeargin as alleged by the Auditing Division -- the 1994 Stipulation provides that Yeargin never held title to any of the materials it procured for WECCO. Because Yeargin never held title, it could owe no sales tax. Had the Tax Commission applied the 1994 Stipulation, as it is required to do by law, the Tax Commission could only have found in favor of Yeargin's refund claim.

The Tax Commission had no legal basis for ignoring the 1994 Stipulation. No motion for relief from the 1994 Stipulation was ever filed. Even if the Auditing Division had filed a motion for relief from the 1994 Stipulation, there are no grounds on which relief could have been granted. The 1994 Stipulation is not based on fraud or inadvertence. It was entered into voluntarily and knowingly. Moreover, Yeargin relied on the 1994 Stipulation for three years. Repudiating the 1994 Stipulation immediately before trial -- three years after it was entered into -- was extremely prejudicial to Yeargin.

ARGUMENT

I. The Controlling Contract Between WECCO and Yeargin Precludes Yeargin From Taking Title To Any Materials For The AP Facility, And There Is Therefore No Basis For Imposing Sales Tax On Yeargin.

The basic doctrine of contract interpretation requires that the courts -- and therefore the Tax Commission -- consider and enforce the plain meaning of the words of a written contract. "The basic rule of contract interpretation is that the intent of the parties is to be ascertained from the content of the instrument itself...." Utah Valley Bank v. Tanner, 636 P.2d 1060, 1061 (Utah 1981).

Ambiguity is not to be imputed lightly. "To demonstrate ambiguity the contrary positions of the parties must each be tenable." Plateau Mining Co. v. Utah Div. of State Lands & Forestry, 802 P.2d 720, 725 (Utah 1990).

In interpreting a contract, the intentions of the parties are controlling. If the contract is in writing and the language is not ambiguous, the intention of the parties must be determined from the words of the agreement. . . . A contract provision is ambiguous if it is capable of more than one reasonable interpretation because of "uncertain meanings of terms, missing terms, or other facial deficiencies."

Winegar v. Froerer Corp., 813 P.2d 104, 108 (Utah 1991) (citations omitted). Still less will ambiguity be found when urged by a stranger to the contract, as the Tax Division is here.

Thus, the fundamental doctrine of contract interpretation is the plain meaning rule. "The plain meaning rule preserves the intent of the parties and protects the contract against judicial revision." Plateau Mining Co. v. Utah Div. of State Lands, *supra*, 802 P.2d at 725. Here, the contract unambiguously states that Yeargin acted at

all times as a procuring agent arranging purchases for the account of WECCO, never for its own account. That contract is not subject to revision by the Tax Commission.

A. The WECCO Contract Unambiguously Gave Title To All Materials From Suppliers Directly To WECCO, Not Yeargin.

The work performed by Yeargin for WECCO was governed and controlled by the June 28, 1988 contract (the "WECCO Contract"). The salient terms of the WECCO Contract unambiguously require Yeargin⁴ to provide procurement and installation services only. The terms of the WECCO Contract preclude Yeargin from taking title to any of the materials or supplies used in the construction of the AP facility:

Owner desires to have Contractor engineer, procure, and construct a 37 million pound per year Ammonium Percholate production facility

A-1 Definition of Work

Contractor shall perform, as necessary for the completion of the Project, the detailed design and engineering . . . ; shall procure, deliver and install permanent materials and equipment; shall procure and deliver construction equipment, supplies, tools;

....

GC-17 Title to Material and Equipment

Title to all material and equipment procured by Contractor to be incorporated into the Project, shall

⁴ Although Yeargin is not a signatory of the WECCO Contract, it nevertheless governs the relationship between Yeargin and WECCO. The WECCO Contract, by its terms, controls all salient aspects of the WECCO AP facility project. Moreover, Yeargin is bound by the contract in virtue of its relation to UE&C because UE&C assigned its role under the WECCO Contract to Yeargin. Tr. pgs. 31:14-32:25. Thus, Yeargin was bound by the WECCO Contract, and performed as WECCO's agent under it.

pass to Owner upon delivery to common carrier or at the Project site, whichever is provided for in the purchase order.

Pet. Exh. 1, pgs. 1, 8 (Rec. pgs. 21, 32) (emphasis added).

The import of these provisions is unambiguous and unmistakable. Yeargin procured materials for WECCO, it did not purchase on its own account. Title to all materials and supplies was transferred directly from the supplier to WECCO. Title was not transferred from suppliers to Yeargin and then to WECCO. That is the plain meaning of the pertinent paragraphs of the WECCO Contract. There is no dispute between the parties to the WECCO Contract as to its meanings. Therefore, under the plain meaning rule, Yeargin acted solely as procurement agent, not as a purchaser.

B. All Of The Testimony On the WECCO Contract Supports Yeargin's Position: Title To Materials Never Rested In Yeargin.

The evidence before the Tax Commission as to whether Yeargin purchased as agent and not for its own account was consistent with the WECCO Contract. Bill Burke, in-house counsel for UE&C and Yeargin, was the only person who provided testimony regarding the role of Yeargin as purchasing agent under the WECCO Contract. Tr. pg. 14, lines 10-19. Mr. Burke's testimony was based on his involvement in forming the WECCO Contract and the related transactions. Tr. pg. 15, lines 1-11. Mr. Burke testified that the WECCO Contract provision regarding title to materials and equipment, GC-17 on page 8 of the WECCO Contract, was always in force and was never amended. Tr. pg. 17, lines 4-23. Burke testified that it was clearly the intent of the

parties that Yeargin would not purchase on its own account and would not take title to any materials or equipment. Tr. pg. 59-60, lines 20-7.

Thus, the only extrinsic evidence as to the meaning of the WECCO Contract was Burke's testimony that, under the WECCO Contract, Yeargin was not to take title and was not to purchase on its own account. There were no exceptions -- if material or equipment was for the AP facility, it went directly from the supplier to WECCO, never to Yeargin. Burke also testified that all materials and suppliers for the AP facility were paid for by WECCO, not by Yeargin.

C. Because The WECCO Contract Unambiguously Precluded Yeargin From Having Title To Materials. The Auditing Division Had But Did Not Meet The Burden Of Proving Departures From The WECCO Contract Sufficient To Support Over \$67,000 In Tax Assessments.

There was no testimony contrary to Burke's on the meaning or scope of the WECCO Contract. What the Auditing Division did not do was offer a sufficient basis to ignore the plain and unambiguous meaning of the WECCO Contract. Instead, the Auditing Division disregarded the WECCO Contract, drew conclusions from a few invoices and extrapolated from an unsupported "summary."

Because the WECCO Contract unambiguously provides that Yeargin act solely as a procurement agent, the Auditing Division, to even begin to claim that the WECCO Contract was not in force or not followed, had to demonstrate the existence of specific, identifiable departures. Thus, even assuming that an individual transaction could appear inconsistent with Yeargin's transactional authority, such departures would

require specific identification.⁵ It cannot substitute mere summaries of allegations for that proof.

An examination of the record shows that the Auditing Division did not meet its burden. The only testimony it offered was summary conclusions of one of its auditors, and a few ambiguous exhibits. It did not offer testimony or evidence supporting transaction giving rise to a tax assessment of over \$67,000.

1. Summary Testimony By An Auditor Does Not Show That The Assessment Was Accurate.

The Auditing Division offered two kinds of evidence for its position, the testimony of Ron Jacobs and a small number of exhibits. Mr. Jacobs, the senior auditor responsible for the Yeargin audit, testified as to his conclusions, i.e., he gave a summary of his investigation. Tr. pgs. 80:9-21; 85:12-86:1. Although Mr. Jacobs claimed to have personally performed the audit (Tr. pg. 80:19-25) and personally vouched for the accuracy of the audit (Tr. pg. 112:4-11), those claims are of no import.

The issue is not whether the Auditing Division performed an audit or whether it believes Yeargin owed additional sales tax. The issue is whether such testimony is legally sufficient. Thus, what matters is whether Yeargin in fact purchased on its own account, that is the fact to be proven by the Auditing Division, not that it did an audit. Mr. Jacobson's assertions regarding the results of an audit are thus not probative.

⁵ Because Yeargin only had authority to purchase as agent and never owned the real property or plant, it is not clear how the failure to spell out the agency status on an individual transaction would have any legal significance.

Moreover, those assertions are of limited credibility. Mr. Jacobson claimed that he personally reviewed each and every document involved in the Yeargin audit during five days of field work in Las Vegas. Tr. pgs. 80:22-25; 83:5-9, 112. In those five days, he reviewed each purchase order file which contained a purchase order, a check, a purchase request, and a vendor invoice. Tr. pgs. 86:23-87:25; 88:10-15. Jacobson determined tax liability based on examination of each of these documents. Id. By his testimony, there were over 12,000 purchase order files, all of which he personally reviewed in five days. Id., Tr. pgs. 8:22-25, 83:5-8; 112.

Assuming Mr. Jacobson worked ten hours a day for the five days, he would have had to review and evaluate 240 files per hour, four files per minute. Thus, each file would have been reviewed and evaluated in fewer than 15 seconds.⁶ That is a remarkable level of diligence, but it hardly allows time for analysis or careful review.

2. The Auditing Division's Exhibits Can Only Show De Minimis, If Any, Tax Liability -- Not The More Than \$67,000 Claimed By The Auditing Division.

The documents do not justify the tax liability assigned to Yeargin. The Auditing Division offered eight exhibits. None of the first five of Respondent's Exhibits provides a basis for any tax liability. Exhibit 1 is the Statutory Notice of tax liability. Rec. 100. Exhibit 2, which is another Auditing Division document, is a summary of items the Auditing Division believed involved mistaken tax payments. Rec. 134. Exhibits 3 and 4

⁶ Indeed, according to Mr. Jacobsen, there were too many files to copy. As Jacobson said, the files would fill "a semi." Tr. pg. 88:16-21.

are Yeargin documents for taxes it paid prior to the audit, and are not at issue here. Rec. 135, 143. Exhibit 5 is the WECCO Contract. Rec. 159. Thus, only Exhibits 6 and 7 could have any probative bearing.⁷ Rec. 204, 212.

Exhibit 6 comprises a contract between Yeargin and Western Rock Products Corporation together with a copy of a Sales and Use Tax Exemption. Those documents do not demonstrate that Yeargin was not acting as agent for WECCO. There is no purchase order, check, or invoice showing Yeargin receiving title to the concrete or otherwise owning that concrete. If Yeargin did not receive title, Yeargin could not have transformed the personalty to realty, as the Auditing Division alleged, and thus could not be liable for sales tax. Compare Final Decision ¶ 19 (Rec. 11).

Exhibit 7 concerns supply of an exhaust fan and fittings for the WECCO AP facility. These documents do not establish \$67,000 of allegedly owed sales tax. They are, even understood favorably to the Auditing Division, ambiguous. The invoice, after all, shows Yeargin to be "consignee," which has no particular legal significance as to whether Yeargin purchased as agent or as principal.

Out of more than 12,000 purchase order files, the Auditing Division based its conclusions on a scant few documents. The project, as all parties acknowledge, was completed on an extremely fast track. Tr. pg. 73:11-16. It is inevitable that in the construction of such a large facility in such a short time that there would be some

⁷ Exhibit 8 is not in dispute (Rec. 218).

documents that did not explicitly refer to Yeargin's status as agent. That is not enough on which to assess over \$67,000 in additional sales tax.

The Auditing Division's evidence does not, even if interpreted most favorably to it, provide substantial evidence of tax liability. The Auditing Division relied on (i) a summary by an auditor of what are essentially legal conclusions,⁸ and (ii) a few purported samples of evidentiary support for the summary.⁹ This is insufficient.

The summary was not admitted pursuant to any stipulation. There is no agreement by Yeargin as to the accuracy of the summary. Indeed, it is what is at issue. Liability must be based on the actual financial and contractual relations. That can only be shown by the underlying documents. Thus, absent agreement by the parties -- and there was no such agreement -- the Auditing Division's summary is of no probative value.

The summary also does not gain support from the sample exhibits. First, three samples are obviously too few in number to show the reliability of a purported summary of thousands of items. Second, they show only a few thousand dollars of potentially taxable purchases, obviously not purchases sufficient to show a tax liability in excess of \$67,000.00. Finally, they do not demonstrate that Yeargin was not acting as agent. There is no evidence that Yeargin acted in contravention of its role as agent nor did the Auditing Division suggest why it would do so.

⁸ Respondents' Exhibit 1 (Rec. 100).

⁹ Respondents' Exhibits 6, 7, 8 (Rec. 204, 212, 218).

D. It Is Not Possible That Yeargin Took Title To Materials And Supplies "After" They Were Delivered To The Project.

The Auditing Division argued, and the Tax Commission found, that Yeargin was liable because it was "possible"¹⁰ that Yeargin received title to materials after delivery to the site when materials were incorporated into WECCO realty, the AP facility. Final Decision at ¶¶ 12, 14 (Rec. 8, 9). That theory is impossible because it is plainly contradicted by the WECCO Contract.

The WECCO Contract provides that title to all materials and supplies rests in WECCO at the latest when the materials or supplies are delivered to the AP facility site. WECCO Contract, ¶ GC-17 (Rec. 32). As a matter of fact and logic, delivery of materials to the site must occur before the materials could be converted to realty. Concrete, for example, cannot be poured before it gets to the site. And, if the concrete is mixed at the site, clearly title to it already lies in WECCO under the WECCO Contract. The constituents of the concrete, after all, had to be delivered for mixing, and once those materials are delivered to the site, WECCO holds title.¹¹

When WECCO's materials are mixed and poured, it is WECCO's concrete that is poured and WECCO's personality that is incorporated into WECCO's realty. Thus, as

¹⁰ Even if such a "possibility" could exist, a mere "possibility" surely would not be sufficient to override an express contractual provision to the contrary.

¹¹ Title is the essence of a determination as to who owes sales tax in a construction project. As the Utah Supreme Court held in Thorup Bros. Const. v. Auditing Division, 860 P.2d 324, 328-29 (Utah 1993), ordinarily only the ultimate consumer is liable for sales tax, and the ultimate consumer is the person who has owns and has title when tangible personal property is converted into real property.

matter of law, logic, and fact, the materials are WECCO's, not Yeargin's. Yeargin could not in any circumstances take title to materials or supplies after the materials were on site by virtue of those materials being incorporated into realty.

E. Whether The Principal/Agent Relationship Of Yeargin And WECCO Was Disclosed At All Times To All Parties Is Irrelevant To This Case.

The Auditing Division repeatedly argued below that, because WECCO was an undisclosed principal, Yeargin had to be liable for any sales and use tax. Tr. pg. 119:8-18. This argument is a non sequitur.

First, the Auditing Division has no standing to invoke or rely on this "undisclosed principle" argument. The "undisclosed principal" rule, which is part of Utah law, holds that where an agent enters into a contract on behalf of an undisclosed principal, both the agent and the principal are jointly liable on the contract. Garland v. Fleischman, 831 P.2d 107, 110 (Utah 1992). This rule has no bearing on this case.

As set out in the Restatement (Second) Agency, which has been adopted in relevant part by Utah, the undisclosed principal rule is for the protection of the other parties to a contract. Id. It provides that an innocent party to a contract is not left without remedy in the event the undisclosed principal breaches. That is to say, because the other party to the contract believed the agent was acting on its own behalf, the other party may require the agent to perform if the undisclosed principal defaults. Similarly, where the identity of a buyer matters, e.g., in a land contract, failure to disclose the principal may be a basis for rescission. In these kinds of cases, the

doctrines applicable to undisclosed principals are to enable the courts to do equity because the other party to the contract has been misled.

The “undisclosed principal” rule applies to claims between parties to the contract. It does not inure to the benefit of third parties. It is pellucid that neither the Auditing Division nor the Tax Commission is a party to any of the contracts salient to this case, nor were they in any way misled.

The Auditing Division did not rely on any representation or lack of representation relating to Yeargin’s agency relationship to WECCO, nor did the Tax Commission. One of the justifications for the “undisclosed principal” rule is that the other parties to the contract entered into the contract in reliance on the agent. Cummings v. Jorgenson, 480 P.2d 466, 467 (Utah 1971). There was no such reliance by the Auditing Division or the Tax Commission.¹² Where there is, and can be, no reliance, there is no basis for holding the agent liable for the obligations of the principal.

The Auditing Division’s reliance on “undisclosed principal” is misplaced for another reason as well. There is no evidence showing Yeargin ever acted for an undisclosed principal. There is no rule or requirement that an agent state on every document, invoice, or contract, that the agent is acting as an agent. Indeed, the Utah courts have held to the contrary, permitting an undisclosed principal to enforce a contract. Garland v. Fleischman, *supra*, 831 P.2d at 110. Here, the agent was involved

¹² Quite to the contrary, early on the Auditing Division was made aware of the agency relationship and stipulated that Yeargin purchased as agent and not for its own account.

in thousands of transactions by which it procured supplies for WECCO. Yeargin was not required to expressly note on each and every invoice, etc., that it was acting only as agent for WECCO. It is not necessary for disclosure of a principal that the agent always and everywhere announce the relationship.

What is necessary is that the agent and principal, Yeargin and WECCO, agree on the relationship, and that they thereafter act in conformance with the relationship. Where appropriate, third parties are to be given notice. It is appropriate when disclosure may reasonably be thought relevant, but notice need not be ubiquitous. Moreover, as to the Auditing Division and the Tax Commission, it is simply false that WECCO was an undisclosed principal. They have known from the outset that Yeargin was acting as procurement agent for WECCO.

The evidence here is consistent with the relationship established by the WECCO Contract. Yeargin acted as agent for WECCO, purchasing for the benefit and account of WECCO rather than itself. It is basic law that an agent, acting within the scope of his agency, binds the principal, not the agent.

II. Pursuant To The April 1994 Stipulation, Yeargin Can Have No Sales Tax Liability In Connection With The WECCO Project.

On April 29, 1994, the parties, after due consideration and full opportunity to investigate, entered into a Joint Stipulation of Facts. The 1994 Stipulation was consistent with the relevant WECCO contract and the known facts. Three years later, on the eve of trial, the Auditing Division purported to unilaterally repudiate the 1994 Stipulation. Yeargin promptly filed a Motion in Limine asking the Tax Commission to

apply the 1994 Stipulation and render judgment consistent with the 1994 Stipulation, as it is required to do by law (Rec. 268). The Tax Commission never ruled on Yeargin's Motion, although the subsequent hearing was conducted as though the Motion in Limine had been denied. The Tax Commission's Final Decision similarly did not specifically address Yeargin's Motion to enforce the 1994 Stipulation but made findings inconsistent with the 1994 Stipulation.¹³ Thus, as a practical matter, the Tax Commission, *sua sponte*, vacated the 1994 Stipulation. That decision was wrong as a matter of law. The Tax Commission should not have permitted the Auditing Division to unilaterally abandon the 1994 Stipulation, and should not have entered findings of fact inconsistent with the terms of the 1994 Stipulation.

The salient portion of the 1994 Stipulation provides that Yeargin was hired solely to provide assistance in engineering, design, and procurement (Rec. 89). It provides that Yeargin assist WECCO in purchasing materials for construction of the facility, locate suppliers and obtain quotations, and arrange for WECCO to purchase materials. *Id.* It provides that title to all materials pass directly from the suppliers to WECCO. *Id.* These provisions of the 1994 Stipulation preclude the Auditing Division's assessment of sales taxes against Yeargin, the Tax Commission's affirmation of that tax, and mandate grant of Yeargin's claim for refund.

¹³ At p. 10 of the Final Decision (Record 15), the Tax Commission offers an interpretation of the 1994 Stipulation. It does not, however, address Yeargin's motion or explain the basis for accepting evidence inconsistent with the plain terms of the 1994 Stipulation.

A. The 1994 Stipulation Is Unambiguous And Plainly Precludes Yeargin's Liability For Sales Tax.

A stipulation is a contract, and is to be interpreted under the same principles which apply to contracts generally. Coalville City v. Lundgren, 930 P.2d 1206, 1209 (Utah Ct. App. 1997) *cert. denied*, 939 P.2d 683 (Utah 1997) ("A stipulation is construed as a contract"); USI Properties East, Inc. v. Simpson, 938 P.2d 168, 173 (Colo. 1997) (to interpret stipulation, "apply general principles of contract law"). The plain meaning of a stipulation binds the parties, and it is to the plain meaning that courts should look to resolve questions concerning the scope of a stipulation. IFG Leasing Co. v. Gordon, 776 P.2d 607, 617 (Utah 1989).

Thus, a stipulation is to be interpreted to give effect to the intentions of the parties at the time they entered into the stipulation. USI Properties East, Inc. v. Simpson, 938 P.2d 168, 173 (Colo. 1997). The intent of the parties is to be determined from the language of the stipulation itself. Id. Where a stipulation is unambiguous, it is to be interpreted according to the plain and ordinary meaning of its terms. Id. Furthermore, a stipulation is ambiguous only if the plain, ordinary, generally accepted meaning of the words of the stipulation is ambiguous. Id.; accord, IFG Leasing Co., supra, 776 P.2d 607.

There is no material ambiguity in the 1994 Stipulation. By the plain meaning of its terms, Yeargin procured -- arranged the purchase of -- supplies by WECCO. Title went from the suppliers directly to WECCO. Title never rested with Yeargin. Yeargin

itself provided no supplies, and did not make purchases on its own account. All of this is plain from the face of paragraph 12:

12. During the course of construction of the facility PPI and WECCO entered into an agreement with United Engineers & Constructors, Inc. and its affiliate, Yeargin, for the purpose of providing assistance in the engineering, design and procurement for the construction of the AP manufacturing facility. United Engineers assisted WECCO in purchasing materials for use in the construction of the facility and located suppliers, obtained price quotations and arranged for WECCO to make purchases of materials. Title to all materials purchased for use at the WECCO facility passed directly to WECCO from the suppliers.

1994 Stipulation, Pet. Exh. 2, p. 4 (Rec. 89).

The ordinary meaning of "title to all materials purchased for use at the WECCO facility passed directly to WECCO from the suppliers" is that WECCO purchased all materials used at the WECCO facility, that WECCO obtained title to the materials from the suppliers without any intervening owners, and that all the materials used were owned by WECCO. The ordinary meaning of paragraph 12 precludes the Auditing Division's scenario. If title went directly from the suppliers to WECCO -- and Yeargin is not a supplier -- then title could not have passed through Yeargin.

No doubt it is possible to conjure up other remotely possible meanings. Those alternatives, however, do not arise from the ordinary meaning of the words, but require wilfully attenuated interpretations, a determined search for another logically possible (but only logically possible) interpretation, no matter how unlikely or remote. On that standard, of course, every contract and every stipulation is ambiguous.

The Auditing Division relies on speculation to create a mere possibility of ambiguity. The Auditing Division suggests that because title transferred directly from suppliers to WECCO, somehow "it is possible that title passed after those materials had been incorporated into real property." That suggestion is nonsensical.

First, the 1994 Stipulation provides that Yeargin was to procure, not supply materials. Yeargin simply was not a supplier. Thus, when title passed is irrelevant because title was never in Yeargin. When title passes matters only to those who have title, and Yeargin was never among them.

Second, the governing contract between WECCO and Yeargin flatly precludes transfer of title after incorporation into realty. The WECCO Contract, which is specifically referenced in the 1994 Stipulation, provides that title to all materials transferred to WECCO at the latest on delivery to the site.¹⁴ "Incorporation into" cannot have occurred prior to delivery. Incorporation into realty is possible only after delivery. But by then title was already in WECCO because title transferred on delivery to the site, at the latest.

Thus, the 1994 Stipulation unambiguously precludes sales tax liability for Yeargin. By its plain terms, Yeargin only procured for WECCO. It did not make

¹⁴ GC-17 Title to Material and Equipment

Title to all material and equipment procured by Contractor to be incorporated into the Project, shall pass to Owner upon delivery to common carrier or at the Project site, whichever is provided for in the purchase order.

Pet. Exh. 1, pg. 8 (Rec. 32).

purchases on its own account. Yeargin therefore did not hold title and was not liable for sales tax.

B. Even If The 1994 Stipulation Were Ambiguous, The Only Evidence As To Meaning Unequivocally Supports Yeargin.

Even if paragraph 12 of the 1994 Stipulation is ambiguous -- and there is no reason to think that it is -- the only evidence of the parties' understanding put before the Tax Commission (and therefore the only evidence before this Court) favors interpreting paragraph 12 consistent with the plain meaning described above. That uncontroverted testimony establishes that the parties intended the 1994 Stipulation to mean that Yeargin acted solely as a procuring agent, that Yeargin never took title to any materials, and supplied no materials of its own. Its claim for refund therefore should have been granted.

All of the testimony as to the meaning, scope, and accuracy of the 1994 Stipulation was by Mr. Keith Rooker, Yeargin's general counsel. Tr. pg. 74:15-22. Mr. Rooker testified that he was intimately familiar with the 1994 Stipulation and with the circumstances in which it was drawn up and executed. Tr. pg. 74:15 to pg. 75:11. Prior to its execution, Rooker carefully reviewed the 1994 Stipulation and the underlying facts. Tr. pg. 74:23 - 75:4. Indeed, Yeargin's attorney signed the 1994 Stipulation under the supervision and at the direction of Rooker. Id.

The 1994 Stipulation accurately reflects the parties' understandings. Tr. pg. 75:19 - 76:14. The 1994 Stipulation was intended to and did state that all of the

materials and equipment incorporated into WECCO's AP facility were paid for by WECCO. Tr. pgs. 77:5-25; 79:6-8.

Thus, there is only one reasonable conclusion: the 1994 Stipulation provides that Yeargin never took title to any materials or supplies. If Yeargin never took title to any materials or supplies, it could not have made retail purchases subject to sales and use tax. The 1994 Stipulation therefore precludes any liability by Yeargin for sales tax in connection with the construction of the WECCO AP facility.

C. The Tax Commission Was Required To Make Findings Consistent With The Terms Of the 1994 Stipulation.

In the absence of a proper grant of relief, a court is required to render judgment consistent with the terms of a stipulation. Higley v. McDonald, 685 P.2d 496, 499 (Utah 1984) (stipulation "precludes the adoption of findings in conflict with stipulated facts"); C.M. Showroom, Inc. v. Boes, 933 P.2d 793, 795 (Kan. App. 1997) ("When a stipulation of facts is agreed to by the parties, a trial court can render only such judgment as those facts warranted").

As set out above, the 1994 Stipulation precluded Yeargin from ever taking or possessing title to any of its supplies or materials used in the WECCO project. The 1994 Stipulation therefore precludes any finding by the Tax Commission that Yeargin had title to materials or equipment. Moreover, under applicable case law, the Tax Commission is required to enter only findings which are consistent with the terms of the 1994 Stipulation.

The Tax Commission found that Yeargin had taken title to supplies, contrary to the 1994 Stipulation. Final Decision, ¶ 19 and pgs. 10-11 (Rec. 15-16). But a court -- and hence the Tax Commission -- is required to make findings consistent with factual stipulations of the parties. Higley v. McDonald, *supra*, 685 P.2d at 499; Dove v. Cude, 710 P.2d 170, 171 (Utah 1985). The Tax Commission's Findings are inconsistent with the 1994 Stipulation, and are, to that extent, therefore void.

III. The Tax Commission Improperly And Without Adequate Cause Vacated A Binding Stipulation Between The Parties.

The 1994 Joint Stipulation of Facts was entered into knowingly by both parties, and was made without limit on either party's opportunity to investigate prior to agreement. Although the 1994 Stipulation was properly entered into, the Tax Commission improperly and without justification, permitted the Auditing Division to unilaterally withdraw from the 1994 Stipulation on the eve of trial, nearly three years after it was entered into.

The Auditing Division was permitted to withdraw from the 1994 Stipulation even though none of the conditions for relief from a stipulation were or could have been met. No motion was filed and no circumstances justified relief. The relief was untimely and highly prejudicial. The Tax Commission's acquiescence was contrary to well-established law.

A. The April 1994 Stipulation Of Facts Is Valid And Binding.

Parties may enter into a pretrial stipulation regarding any and all material facts. First of Denver Mortgage Investors v. C.N. Zundel & Assocs, 600 P.2d 521, 527 (Utah 1979); C.M. Showroom, Inc. v. Boes, 933 P.2d 793, 795 (Kan. App. 1997). A stipulation of facts is a binding judicial admission. First of Denver Mortg. Investors, supra, 600 P.2d at 527; Bonner v. Oklahoma Rock Corp., 863 P.2d 1176, 1181 n.15 (Okla. 1993) ("Stipulations are solemn admissions. . . . Such judicial admissions are generally binding and conclusive on the parties as well as on the court."). Such a stipulation is binding on the parties through trial and appeal. State v. Velasquez, 672 P.2d 1254, 1265 (Utah 1983) ("Parties are bound by their trial stipulations"); Nanonka v. Hoskins, 645 P.2d 507, 508 (Okla. 1982) ("A stipulation admitting or agreeing to certain facts for the purpose of trial is binding and conclusive on the parties during the progress of the trial and on appeal").

A stipulation executed by a party's attorney of record is binding on that party. Dove v. Cude, 710 P.2d 170, 171 (Utah 1985). A stipulation filed with the appropriate court stipulation governs the litigation between the signing parties. Id.; Higley v. McDonald, 685 P.2d 496, 499 (Utah 1984) (stipulations of fact "are conclusive and binding on the parties"). A party who enters into a stipulation of fact is bound by that stipulation for the life of the litigation regardless of whether the stipulation was entered into at the beginning of discovery or near the end of trial. Nanonka v. Hoskins, 645 P.2d 507, 508 (Okla. 1982) ("A stipulation admitting or agreeing to certain facts for the

purpose of trial is binding and conclusive on the parties during the progress of the trial and on appeal").

The 1994 Stipulation was executed by Assistant Attorney General Gale K. Frances on behalf of the Auditing Division as its attorney of record. Yeargin executed the 1994 Stipulation through its attorney of record at the time, R. Glenn Woods. The 1994 Stipulation, which, as described above, concerns only questions of fact, was then filed with the Tax Commission on May 5, 1994.

Here, the parties, acting through their attorneys of record, executed and submitted to the Tax Commission a stipulation as to all material facts. The April 1994 Stipulation is therefore presumptively valid and binding.

B. Because The Auditing Division Neither Sought Nor Obtained Relief From The 1994 Stipulation, The 1994 Stipulation Determines All Facts Material To This Litigation.

A party to a stipulation may not unilaterally withdraw from the stipulation, but may do so only by leave of court following a motion. State v. Velasquez, 672 P.2d 1254, 1265 (Utah 1983) ("Parties are bound by their trial stipulations unless upon motion they are relieved therefrom") (emphasis added); accord, Bonner v. Oklahoma Rock Corp., supra, 863 P.2d at 1181, n.15.

A court may grant a motion to withdraw from a stipulation only if the moving party can show good cause for withdrawing. Higley v. McDonald, supra, 685 P.2d at 499 (stipulation "binding on the parties unless, upon timely notice and for good cause shown, relief is granted therefrom."); Dove v. Cude, supra, 710 P.2d at 171. Good

cause is not just any cause or party convenience. Instead, the moving party must show that the stipulation was entered into inadvertently or “through mistake, fraud, collusion, accident or some ground of like nature.” Citicorp Services, Inc. v. Lee, 665 P.2d 265, 266 (Nev. 1983); Norris v. Norris, 727 P.2d 115, 116 (Ore. 1986) (stipulation binding “absent fraud, duress” or like circumstance).

Where a party seeks leave to withdraw from a stipulation based on a claim of mistake of fact, the moving party must show that “the mistake is not due to failure to exercise due diligence and it could not have been avoided by the exercise of ordinary care.” State v. Velasquez, 672 P.2d 1254, 1265 (Utah 1983). Moreover, a party may not obtain leave to withdraw from a stipulation where doing so would be prejudicial to the other party, or where the request is untimely. Dove v. Cude, *supra*, 710 P.2d at 171, n.2. Finally, if a court does grant leave to a party to withdraw from a stipulation, the court must articulate the basis for granting leave. *Id.*, at 171.

In this case, none of the requirements for relief from a stipulation have been met. The Auditing Division never filed a motion requesting permission to withdraw from the 1994 Stipulation. A request for relief from the 1994 Stipulation was never granted. Even if the Auditing Division had made a motion to withdraw, there is no basis for granting such a motion.

1. The Auditing Division Never Moved For Relief From the 1994 Stipulation.

The Auditing Division may argue that its Opposition to Yeargin’s Motion in Limine was the functional equivalent of a Motion to Withdraw from the 1994 Stipulation. It is

not. Even if it were the equivalent of a motion, it is insufficient to justify withdrawal from the stipulation.

First, it is clear that a prerequisite to withdrawal from a stipulation is that the party seeking withdrawal must request leave of the court to withdraw. State v. Velasquez, 672 P.2d 1254, 1265 (Utah 1983). A stipulation, after all, is a solemn, binding judicial admission. USI Properties East, Inc. v. Simpson, 938 P.2d 168, 175 (Colo. 1997); Bonner v. Oklahoma Rock Corp., 863 P.2d 1176, 1181, n.15 (Okla. 1993). Parties may not lightly abandon such commitments; indeed, they may do so only for good cause. Dove v. Cude, *supra*, 710 P.2d at 171. Thus, a motion is required to ensure that parties enter stipulations with due gravity and commitment, and that, should a party seek to withdraw, the party does so only to prevent a grave miscarriage of justice. State v. Velasquez, 672 P.2d 1254, 1265 (Utah 1983). These ends cannot be met if a party may withdraw based only on a perfunctory, *pro forma* application, or if a bare recitation of vague allegations sufficed.

Yet the Auditing Division's request for relief could not have been more vague or perfunctory. The Auditing Division made no motion to set aside the 1994 Stipulation. It merely tacked on a request for relief to its opposition to Yeargin's Motion in Limine. Thus no motion for relief was ever made.

2. Even If A Motion For Relief Had Been Made, There Are No Grounds For Relief.

The grounds offered by the Auditing Division are patently inadequate, indeed, they are improper:

At the time of the stipulation, counsel for the parties relied upon the representations of R. Glen Woods in drafting and agreeing to paragraph 12 of the Joint Stipulation. Obviously, subsequent investigation showed the error should anyone interpret paragraph 12 to state Yeargin Inc. had not purchased materials. To that extent, the Joint Stipulation reflects a mistake of fact.

Memorandum in Opposition to Petitioner's Motion in Limine, pg. 4 (Rec. 228). These claims are insufficient as a matter of law. In fact, they show conclusively that there are no grounds for relief from the 1994 Stipulation.

The Auditing Division entered into the 1994 Stipulation through its attorney of record, and did so voluntarily and intentionally. As the court noted in Dove v. Cude, "It is unlikely that a stipulation signed by counsel and filed with the court was entered into inadvertently." Dove, supra, 710 P.2d at 171. The 1994 Stipulation was not made inadvertently. The 1994 Stipulation was not the result of fraud. The Auditing Division does not suggest any confusion or mistake, at the time the 1994 Stipulation was made, regarding the scope, content, or meaning of the 1994 Stipulation. Those are the kinds of mistakes which may justify relief from a stipulation. See, e.g., Dove v. Cude, supra, 710 P.2d at 171. A mistake of fact matters only if the stipulation was entered into as a result of the mistake. A difference in views as to the stipulated facts -- what the Auditing Division relies on -- is not such a mistake. Thus, none of the ordinary grounds for relief are present.

"A mistake of fact may also constitute a valid ground for setting aside a stipulation if the mistake is not due to failure to exercise due diligence and it could not

have been avoided by the exercise of ordinary care.” State v. Velasquez, *supra*, 672 P.2d at 1265. The Auditing Division bases its withdrawal on the “discovery” of documents allegedly inconsistent with the facts stated in the 1994 Stipulation. This is no basis for relief.

First, the “later discovered facts” are not of the right kind. None of these “facts” constitute the basis for either party’s agreement to the 1994 Stipulation. That is, none of the “new facts” suggested by the Auditing Division show that the Auditing Division entered into the 1994 Stipulation by mistake. They show only that the Stipulation resolved a disagreement between the parties as to some facts, a disagreement made moot by the 1994 Stipulation.¹⁵

Second, the new information could have been discovered *prior* to entering into the Stipulation. Certainly, it was all available to the Auditing Division both before and shortly after the Stipulation was entered into. The Audit Notice was sent to Yeargin in 1992. The supporting documents, and facts, were thus known to the Auditing Division prior to April 1994. All of the Auditing Division’s exhibits except Exhibit 5, the WECCO contract, are incorporated into the Audit Notice. Thus, only the WECCO contract -- which supported the 1994 Stipulation -- was “discovered” after the 1994 Stipulation was signed.

¹⁵ One point of a stipulation is just to resolve factual disputes prior to trial. If a disagreement of this kind could void a stipulation, stipulations would never be binding.

The Auditing Division has never even argued that these “new facts” could not have been known by due diligence in April 1994. How could it? All of the documents were in its hands before or shortly after the 1994 Stipulation was signed. A party seeking relief based on mistake of fact must show not only the mistake (something the Auditing Division has not done), but must also show that “the mistake is not due to failure to exercise due diligence and [that] it could not have been avoided by the exercise of ordinary care.” State v. Velasquez, *supra*, 672 P.2d at 1265. The Auditing Division’s “mistake of fact” amounts to an admission that it did not exercise due diligence or ordinary care.

3. Even If The Auditing Division Had Moved For Relief, The Request Should Have Been Denied As Untimely And Prejudicial.

A motion for leave to withdraw must be timely made. Johnson v. Peoples Finance & Thrift Co., 272 P.2d 171, 173 (Utah 1954); *accord*, Dove v. Cude, *supra*, 710 P.2d at 171, n.2. Here, the Auditing Division never sought leave to withdraw. When it unilaterally repudiated the 1994 Stipulation, it did so nearly three years after the 1994 Stipulation was signed and filed. A three-year delay is hardly a “seasonable” request for leave to withdraw. As the court noted in Dove v. Cude, a lapse of even five or nine months in requesting leave to withdraw from a stipulation raises serious doubts as to timeliness and may be sufficient basis to deny such a request. *Id.* The Auditing Division’s delay in seeking to withdraw from the 1994 Stipulation is inexcusable. The

"new facts" the Auditing Division cites as the basis for withdrawal were known to it, at the very latest, less than a month after the stipulation was signed.¹⁶

The Auditing Division's untimely repudiation of the 1994 Stipulation also resulted in serious prejudice to Yeargin. For three years Yeargin had relied on paragraph 12 of the 1994 Stipulation. As a result of that reliance, Yeargin did not preserve material, probative evidence nor obtain witness statements. Had Yeargin known that the Auditing Division would be able to repudiate the 1994 Stipulation at its whim, Yeargin would certainly have taken steps to preserve evidence and testimony.

That Yeargin was severely prejudiced by the Auditing Division's unilateral repudiation of the 1994 Stipulation is undeniable. The individuals most directly involved in the WECCO project have left Yeargin's employ and can no longer be located, including, for example, the person who actually directed the WECCO project for Yeargin. Had Yeargin known that the Auditing Division would renege on its agreement in the 1994 Stipulation, Yeargin could and would have taken appropriate steps to preserve testimony and evidence. Where, as here, relief from a stipulation is both untimely and highly prejudicial, no court could, without abuse of discretion, grant the Auditing Division relief from the 1994 Stipulation.

¹⁶ In addition, the Auditing Division itself relied on the 1994 Stipulation. See, e.g., Amended Brief of Respondent, filed November 9, 1994 before the Tax Commission in Tax Commission Case No. 92-1400 (and consolidated cases) at pages 4 and 15.

C. The Tax Commission's Failure To Enforce The 1994 Stipulation Fails Every Test For Proper Relief From A Stipulation and Was Improper.

A party may withdraw from a stipulation only on a motion to the court. Dove v. Cude, *supra*, 710 P.2d at 171. The circumstances in which such a motion may be granted are limited. DLB Collection Trust v. Harris, 893 P.2d 593, 595 (Ut. App. 1995) *cert. denied*, 910 P.2d 425 (Utah 1995). A motion to withdraw may be granted where the party entered into the stipulation inadvertently, by mistake, or fraud, or when the stipulation is fundamentally unjust. Dove v. Cude, *supra*, 710 P.2d at 171. The motion must be seasonably made. *Id.*, at 171, n.2. A court may not grant the motion if doing so would prejudice the non-moving party. *Id.* Each and every one of these factors, individually and collectively, weighs decisively against the Auditing Division's repudiation of the 1994 Stipulation as well as the Tax Commission's failure to enforce the 1994 Stipulation.

The Auditing Division has never filed a motion requesting leave to withdraw from the 1994 Stipulation. Had the Auditing Division done so, no grounds exist for granting such a motion. The 1994 Stipulation was not entered into inadvertently, but deliberately and voluntarily by the Auditing Division's attorney of record. It was not entered into by mistake or by reason of fraud. The 1994 Stipulation is and was proper and fair.

The Auditing Division's request, had it actually made one, would have been unseasonable. The Auditing Division purported to abandon the 1994 Stipulation three years after entering into it. A three-year lapse is untimely. Finally, Yeargin, having

relied on the 1994 Stipulation for three years, was severely prejudiced by the Auditing Division's repudiation of the 1994 Stipulation.

All factors considered, the Auditing Division's unilateral withdrawal from the stipulation was improper and without legal justification. The Tax Commission's decision to permit the Audit Division to withdraw was contrary to law and unsupported by any articulable justification. This Court therefore should reinstate the 1994 Stipulation and render judgment consistent therewith.

RELIEF REQUESTED

The Commission's failure to enforce the 1994 Stipulation was contrary to law. It is apparent that there is no basis for relief from the 1994 Stipulation. It is equally plain that, consistent with the terms of Yeargin's contract with WECCO, the 1994 Stipulation unambiguously precludes any liability by Yeargin for sales tax in connection with the WECCO AP facility.

This Court should reverse the Findings of the Tax Commission. Consistent with the 1994 Stipulation, this Court should order the Tax Commission to grant Yeargin's refund claim.

RESPECTFULLY submitted this 16 day of September, 1998.

GIAUQUE, CROCKETT, BENDINGER & PETERSON

By:




Robert A. Peterson, Esq.
170 South Main Street, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 533-8383

Attorneys for Appellant

CERTIFICATE OF SERVICE

This is to certify that two (2) copies of **APPELLANT'S OPENING BRIEF** was hand delivered on the 16 day of September, 1998, to the following:

Gale K. Francis
Assistant Attorney General
160 East 300 South, #500
Salt Lake City, Utah 84114



ADDENDUM TO APPELLANT'S OPENING BRIEF

Tab 1

BEFORE THE UTAH STATE TAX COMMISSION

YEARGIN INC & WESTERN)	
ELECTROCHEMICAL,)	
	:	
Petitioner,	)	FINDINGS OF FACT,
	:	CONCLUSIONS OF LAW,
v.	)	AND FINAL DECISION
	:	
AUDITING DIVISION OF THE	)	Appeal No. 93-0002
UTAH STATE TAX COMMISSION,	:	
	)	Account No. H02516
	:	
Respondent.	)	Tax Type: Sales & Use Tax

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 13, 1997. G. Blaine Davis, Administrative Law Judge, heard the matter for and on behalf of the Commission. Present and representing Petitioner were Mr. Robert Peterson from the law firm of Giauque Crockett Bendinger and Peterson, together with Mr. Bill Burke and Mr. C. Keith Rooker. Present and representing Respondent were Mr. Gale Francis, Assistant Attorney General, together with Mr. Brad Simpson, Mr. Bert Ashcroft, Mr. Ron Jacobson, and Ms. Marie Humphreys from the Auditing Division.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

RECEIVED

APR 15 1997

GIAUQUE CROCKETT.

FINDINGS OF FACT

1. The tax in question is sales and use tax.
2. The period in question is October 1988 through December 1989.
3. Petitioner, Yeargin Inc., is a corporation organized, existing, and in good standing under the laws of the State of Delaware, and was duly qualified to transact business and was in good standing as a foreign corporation under the laws of the State of Utah.
4. Western Electrochemical Company (WECCO) was also a Delaware Corporation and was authorized to transact business in the State of Utah.
5. WECCO is a wholly owned subsidiary of Pacific Engineering and Production Company of Nevada (PEPCON) which, prior to May 4, 1988, operated an ammonium perchlorate (AP) manufacturing facility in Clark County, Nevada. Prior to May 4, 1988, PEPCON was one of two domestic producers of AP. AP is a chemical that is essential to a variety of national defense and space exploration programs.

6. On May 4, 1988, a series of fires and explosions at the PEPCON-AP manufacturing facility resulted in the total destruction of PEPCON's facility and the loss of approximately one-half of the United States' domestic AP production capacity.

7. After the May 4, 1988 fires and explosions, the United States Department of Defense (DOD) and the National Aeronautic's and Space Administration (NASA) determined that it was essential to national security and space exploration that the nation's AP production capacity be replaced as soon as possible.

8. After the fires and explosion of May 4, 1988, PEPCON lacked sufficient funds with which to rebuild or replace its AP manufacturing facility, and was unable to obtain conventional financing for this purpose. In order to expedite the replenishment of the nation's AP production capacity, contractors of NASA and DOD made certain financing available to PEPCON Production Inc. (PPI), an affiliate of PEPCON. The terms of the financing prohibited the expenditure of the loan funds to purchase "non-severable" property, or real property.

9. The financing made available by contractors of NASA

and the DOD was the sole source of construction funds for the AP facility until permanent financing was obtained in March, 1989.

10. It was not possible to rebuild the AP manufacturing facility on the site that had been occupied by the PEPCON manufacturing facility. After a brief but intensive search, a suitable site was located in Iron County, Utah, approximately 15 miles west of Cedar City. PPI purchased the site with its own funds because real property was not a permissible use of the construction funds. Construction began at the Iron County site in July, 1988 and proceeded under the terms of a DOD priority rating, pursuant to the provisions of the Defense Priority and Allocation System Regulation (15 C.F.R. 350).

11. During the construction period, a search for permanent financing continued. When construction was nearly complete, permanent financing was obtained from Security Pacific Bank, Washington, N.A. The permanent financing was closed on March 3, 1989. On that date, the lender required that PEPCON form WECCO for the purpose of completing the construction of the facility and thereafter operating the facility. WECCO then succeeded PPI as the

owner of the AP facility under construction. Initial manufacture of AP at the new WECCO-AP manufacturing facility occurred in August, 1989.

12. During the course of construction of the facility, PPI and WECCO entered into an agreement with United Engineers and Constructors, Inc., and its affiliate, Yeargin, for purpose of providing assistance in the engineering, design and procurement for the construction of the AP manufacturing facility. United Engineers assisted WECCO in purchasing materials for use in the construction of the facility and located suppliers, obtained price quotations and arranged for WECCO to make purchases of materials. In addition to assisting WECCO, United Engineers and Yeargin actually purchased some of the materials which were invoiced and billed to Yeargin and were paid for by checks from Yeargin. Yeargin ultimately installed those materials into the real property at the WECCO facility or consumed the materials in the construction process. The contract provides that title to all materials purchased for use at the WECCO facility would pass directly from suppliers to WECCO, but the invoices and checks indicate that some

of the materials came to rest in the hands of Yeargin.

13. United Engineers placed one of its employees with Yeargin to perform the purchasing function for the products for WECCO. That employee performed those purchasing functions. Paragraph GC-17 of the Agreement between PPI and United Engineers and Constructors Inc., provided that "title to all material and equipment procured by contractor to be incorporated into the project, shall pass to owner upon delivery to common carrier or at the project site, whichever is provided for in the purchase order." However, Petitioner was not a party to that contract. Even if Petitioner had been a party to the contract, the actions of Petitioner determine the taxability of purchases, and not the written agreement, especially if the provisions of the agreement were not followed.

14. Notwithstanding paragraph GC-17 of the agreement, paragraph A-1 of the agreement provides the contractor (United or Yeargin) is to "procure, deliver and install permanent materials and equipment;". The evidence submitted in this proceeding is clear that Petitioner did procure many of the materials and install

them into the project. 4

15. Yeargin also issued an exemption certificate to the vendors of some of the materials. Exemption certificates were not appropriately issued for any materials which were not resold or which Petitioner installed into real property.

16. There is no evidence, or even an allegation, that WECCO or any other company paid the sales tax on the materials at issue in this proceeding.

17. The only items on which sales tax has been imposed upon Petitioner by Respondent are those materials which were invoiced to Petitioner and/or were paid for by checks of Petitioner.

18. In performing the audit, Respondent looked only at who bought and paid for the materials. The source of those funds was not, and should not have been, material in determining whether or not Petitioner should have paid sales tax on the materials.

19. Petitioner converted the materials to real property, or personally consumed the materials in the construction of the project.

APPLICABLE LAW

There is a sales tax imposed upon the purchaser for amounts paid or charged for retail sales of tangible personal property made within the State of Utah (U.C.A. 59-12-103).

Property purchased for resale in this state in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product is exempt from sales tax. (U.C.A. 59-12-104(27)).

Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are subject to tax if the contractor or repairman converts the materials or items to real property. (Rule R865-19S-58, Utah Administrative Code).

The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into between the parties. (Rule R865-19S-58B.1, Utah Administrative Code).

ANALYSIS

In this case, Respondent made an audit assessment against

Petitioner for additional sales and use taxes. Petitioner has paid the full amount of sales and use taxes, together with the interest thereon, and Petitioner is now seeking a refund of approximately \$87,000 for the taxes and interest which it paid pursuant to the audit. If the audit assessment is correct, then Petitioner was not entitled to such a refund. If the audit assessment was not correct, then Petitioner is entitled to a refund.

The position of Petitioner is that it never made any purchases of products upon which it should have paid tax, because the title to those products passed directly to WECCO as provided by the contract between WECCO, PEPCON Production Inc., and United Engineers and Constructors, Inc.

Petitioner further relies upon paragraph 12 of the stipulation of facts entered into between the parties in which it was agreed that United Engineers assisted WECCO in purchasing materials for use in the construction of the facility and located suppliers, obtained price quotations and arranged for WECCO to make purchases of materials. Therefore, Petitioner claims that its only function was to assist in obtaining materials and that it did not

actually obtain any such materials. However, the interpretation of the Commission of that stipulation is that although one of the functions of United Engineering was to assist WECCO, that does not foreclose the possibility that United Engineers (Yeargin) may have itself purchased materials for the construction of the facility. The Petitioner's interpretation of paragraph 12 is one possible interpretation of the paragraph, but it is not the only possible interpretation. Further, Respondent has submitted evidence which would indicate that Petitioner's interpretation of paragraph 12 does not accurately portray the facts as they were carried out by the parties.

Petitioner also takes the position that everything was purchased for the account of the owner, but there may have been some mistakes in documentation because of the fast-track requirements to try to get the plant built in a hurry to restore the nation's AP production capacity. Again, that does not comport with the invoices billing items directly to Yeargin, and Yeargin then paying those invoices from its funds. That argument may be persuasive if it were determined that the owner, either WECCO or

PEPCON paid the tax on the materials, but there is no evidence to indicate that any other entity has also paid the tax on the materials purchased by Yeargin.

Therefore, it appears clear to the Commission that Yeargin purchased the materials and installed those materials into the real property at the Cedar City facility or otherwise consumed those materials or supplies in the construction of that project. Under either event, sales and use tax would be due and owing from Petitioner.

DECISION AND ORDER


Based upon the foregoing, the Tax Commission finds that the audit assessment made by Respondent was appropriate, that Petitioner was responsible for the payment of such sales and use taxes. Petitioner is therefore not entitled to the requested refund. The request for refund is denied, and the audit assessment

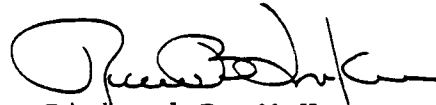
Appeal No. 93-0002

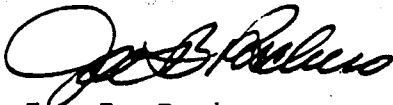
is affirmed and sustained. It is so ordered.

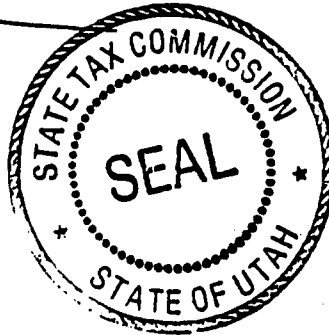
DATED this 14 day of April, 1997.


BY ORDER OF THE UTAH STATE TAX COMMISSION.


W. Val Oveson
Chairman


Richard B. McKeown
Commissioner


Joe B. Pacheco
Commissioner




Alice Shearer
Commissioner

NOTICE: You have twenty (20) days after the date of a final order to file a Request for Reconsideration with the Commission. If you do not file a Request for Reconsideration with the Commission, you have thirty (30) days after the date of a final order to file a.) a Petition for Judicial Review in the Supreme Court, or b.) a Petition for Judicial Review by trial de novo in district court. (Utah Administrative Rule R861-1A-5(P) and Utah Code Ann. §§59-1-601(1), 63-46b-13 et. seq.)

GBD/ssw93-0002.lcf

C E R T I F I C A T E O F M A I L I N G

Utah State Tax Commission
Appeal

Yeargin Inc & Western Electrochemical VS. Auditing Division	93-0002
---	---------

Yeargin Inc. & Western Electrochemical
Petitioner
3770 Howard Hughes Parkway, Suite 300
Las Vegas NV 89109

Sandberg, Craig
Respondent
Director of Auditing
210 North 1950 West
Salt Lake City UT 84134

Peterson, Robert A., Esq.
Attorney for Petitioner
First Interstate Plaza
170 South Main St., Suite 400
SLC UT 84101

Francis, Gale K.
Attorney for Respondent
160 East 300 South, 5th Floor
Salt Lake City UT 84144

I hereby certify that I mailed a copy of the foregoing document
addressed to each of the above named parties.

4-14-97
Date

Wendy J. Stickney
Appeals Staff

AGREEMENT
FOR ENGINEERING, PROCUREMENT, AND CONSTRUCTION
between

PEPCON PRODUCTION, INC.

and

UNITED ENGINEERS & CONSTRUCTORS INC.
STEARNS-ROGER DIVISION

U/S-R PROJECT NO. 9079.001

TABLE OF CONTENTS

AGREEMENT

<u>PARAGRAPH</u>	<u>TITLE</u>	<u>PAGE NO.</u>
	Preamble	1
A-1	Definition of Work	1
A-2	Definition of Contract Documents	1
A-3	Commencement and Completion of Work	1
A-4	Compensation	2
A-5	Invoicing and Payment	2
A-6	Care, Custody, & Control and Acceptance of Work	3
A-7	Suspension and Termination	3
A-8	Representatives and Notices	4
A-9	Prior Agreements	5
A-10	Assignment	5
A-11	Target Cost	5
A-12	Target Completion Schedule	6
A-13	Arbitration	6
	Signatures	6

GENERAL CONDITIONS

GC-1	Method and Manner of Performance	1
GC-2	Plans, Specifications, and Drawings	1
GC-3	Changes	2
GC-4	Scheduling and Progress Reports	2
GC-5	Records and Accounting	2
GC-6	Non-Discriminatory Employment Practices	3
GC-7	Subcontracts	3
GC-8	Clean-up	3
GC-9	Start-Up of Project	3
GC-10	Force Majeure	4
GC-11	Indemnification	4
GC-12	Insurance	4
GC-13	Warranties	6
GC-14	Laws, Codes, Rules and Regulations	7
GC-15	Patents and Patent Infringements	7
GC-16	Proprietary Information	7
GC-17	Title to Material and Equipment	8
GC-18	Liens	8
GC-19	Damages	9
GC-20	Interpretation	9

TABLE OF CONTENTS

EXHIBITS

EXHIBIT A - REIMBURSABLE COSTS

EXHIBIT B - BASIS FOR TARGET COMPLETION SCHEDULE

AGREEMENT

AGREEMENT made effective June 28, 1988, between PEPCON PRODUCTION, INC. (PPI), a Nevada corporation ("Owner") and UNITED ENGINEERS & CONSTRUCTORS INC., STEARNS-ROGER DIVISION, a Delaware corporation ("Contractor").

Owner desires to have Contractor engineer, procure, and construct a nominal 30 million pound per year Ammonium Perchlorate production facility at sites in Nevada and Utah as determined by Owner ("the Project"); Contractor desires to undertake such engineering, procurement, and construction services; and the parties desire to use a cost plus fee agreement.

In consideration of the mutual covenants and agreement herein contained, it is agreed as follows:

A-1 Definition of Work

Contractor shall perform, as necessary for completion of the Project, the detailed design and engineering (including preparation of plans, specifications, construction drawings, and estimates); shall procure, deliver and install permanent materials and equipment; shall procure and deliver construction equipment, supplies, tools; shall provide supervisory services and labor; and shall perform changes, if any, pursuant to GC-3; all in accordance with the terms of this Agreement (the Work).

A-2 Definition of Contract Documents

The Contract Documents, at the time of execution hereof, consist of the following:

- A-2.1 Agreement (A)
- A-2.2 General Conditions (GC)
- A-2.3 Exhibit "A" - Reimbursable Costs
- A-2.4 Exhibit "B" - Basis for Target Completion Schedule
- A-2.5 The provisions of the documents described above following A-2.1 are incorporated herein by reference as if set forth in full.

A-3 Commencement and Completion of Work

Contractor shall begin the Work as of the effective date of this Agreement and shall proceed diligently with the Work to completion.

A-4 Compensation

In consideration of Contractor performing the Work, Owner agrees to pay Contractor the costs incurred in the prosecution of the Work including, but not limited to, all Reimbursable Costs plus a Fee in the amount of six hundred ninety thousand dollars (\$690,000.00). "Reimbursable Cost", as used herein, is defined in Exhibit "A" attached hereto. Compensation shall be paid in U.S. dollars.

A-5 Invoicing and Payment

- A-5.1 Contractor will invoice Owner weekly for Reimbursable Costs under Paragraph A-4 above. Such invoices will be supported by appropriate details. Owner will pay Contractor within ten (10) days of receipt of invoices.
- A-5.2 Contractor shall submit a fee invoice to Owner, weekly, for a portion of Contractor's fee. Fee invoices shall be calculated at two and three-tenths percent (2-3/10%) of the Reimbursable Costs. Fee Invoices shall be paid by Owner within ten days of receipt.
- A-5.3 Overdue payments for the payment of Contractor's invoices beyond the periods stated, shall accrue interest charges at a rate of two percent (2%) over the prime lending rate of Contractor's principal banking institution, and such interest charges will be Reimbursable Cost.
- A-5.4 Should, for any reason, the project or this Agreement be suspended or terminated due to Owner's inability to obtain financing non-payment of Contractor's invoices, or any other reason, all accounts due Contractor under A-4, A-5.1, A-5.2 and A-5.3 above shall be payable by Owner to Contractor within ten (10) days of receipt of invoice.

A-6 Care, Custody and Control and Acceptance of Work

A-6.1 Within seven (7) days after receipt by Owner of Contractor's advice that the Work or any segregable portion thereof is mechanically complete and ready for initial start-up, Owner will notify Contractor in writing as to any particulars in which it believes the Work is not mechanically complete and ready for initial start-up. Except as so specified by Owner, transfer of care, custody and control shall be deemed to occur at the expiration of said period. In any event, the transfer to Owner of care, custody and control shall occur no later than when Owner takes physical possession of a particular portion of the Work, and the transfer of care, custody, and control shall constitute Owner's assumption of responsibility for physical loss or damage to the Work.

A-6.2 Within seven (7) days following receipt by Owner of Contractor's written advice that the Work has been completed, Owner will notify Contractor in writing as to any particulars in which it believes the Work has not been completed in accordance with the Contract Documents. Except as so specified by Owner, Final Acceptance of the Work shall be deemed to occur at the expiration of said period. As to particulars so specified by Owner, Contractor shall continue work on those items that do not comply with the Contract Documents, and Owner shall accept each such item as it so complies. Owner's acceptance of the last of such items shall constitute Final Acceptance of the Work.

A-6.3 Final Acceptance of the Work by Owner shall constitute a release of all claims by Owner against Contractor except for items specifically reserved by Owner in writing at the time of Final Acceptance and, except as provided in GC-13, no action or proceeding shall be commenced against Contractor in connection with the Work after the expiration of one (1) year following Final Acceptance or the date upon which Owner has actual knowledge, or in the exercise of reasonable care should have knowledge, of the existence of any claim, whichever shall last occur, but in no event shall any claim be brought by Owner against Contractor subsequent to November 1, 1991.

A-6.4 Any efforts by Contractor after Final Acceptance as provided in A-6 hereof, whether involving engineering, procurement, construction, or other services or subcontracts, shall be upon a fully reimbursable basis with no withholding by Owner of any costs or fees.

A-7 Suspension and Termination

A-7.1 Owner shall have the right to suspend or terminate all or a portion of the Work at any time upon prior written notice to Contractor.

A-7.1.1 In the event of termination, Owner shall pay Contractor's Reimbursable Costs and Fee chargeable through the effective date of termination.

, in
with
s and
itate

A-7.1.2 Owner shall pay Contractor its Reimbursable Costs and fee for Work performed by Contractor on behalf of Owner following the effective date of termination.

de in
me of

A-7.1.3 Owner shall assume and become liable for those obligations incurred by Contractor which, but for such termination, would have been items of Reimbursable Costs payable to Contractor pursuant to the provisions of A-4 and A-5. Contractor shall execute and deliver all instruments and take all steps required to transfer to and fully vest in Owner contractual rights and obligations of Contractor as to third parties.

e the
, and

A-7.1.4 In the event of suspension, Owner shall continue to pay Contractor its Reimbursable Costs and Fee until the performance of the Work is recommenced or terminated.

i, and
rties,
y both

2 In the event Owner delays or suspends the Work without terminating, Contractor shall have the option to terminate its performance of the Work if the duration of such delays and suspensions exceeds, in the aggregate, one hundred eighty (180) days. Contractor shall also have the option to terminate its performance of the Work if Owner shall default in the performance of any of its material obligations required by the terms of this Agreement. In the event of Contractor termination, the parties shall comply with the provisions of A-7.1.

st and
shall
onsent

3 The effective date of any suspension or termination shall be thirty (30) days after the date of written notice to the other party of such event.

n as a
ings or
timated
provide
e plan
ty (30)

Representatives and Notices

1 Contractor will have a Project Manager in charge of the Work. The Project Manager will maintain close contact with Owner's representatives. All instructions, changes, and formal notices to Contractor shall be directed by Owner's general representative, in writing, to the Project Manager.

:

3.2 Owner will promptly designate, in writing, a general representative to whom all of Contractor's requests for instructions, changes, and formal notices will be directed and from whom Contractor shall receive all instructions, changes, and formal notices made in behalf of Owner. The general representative will have authority to act for Owner in all

agreed
) to a
of the
adjusted
exceed

days of

Target Completion Schedule

Owner and Contractor agree to an incentive bonus to Contractor for achieving a Target Completion date for the availability to Owner for initial operation of the Ammonium Perchlorate crystallizers and dryers. The terms for such an incentive plan are as follows:

- (a) The Target Completion date shall be established by mutual agreement by amendment to this contract within thirty (30) days after construction financing is established and funds are available for the engineering, procurement and construction of the plant.
- (b) Bonus for the actual operational completion date on or before the Target Completion date will be one hundred thousand dollars (\$100,000).
- (c) The Target Completion date is based on the assumptions listed in Appendix "B" hereto and will be subject to adjustment based on variations or changes in these assumptions.
- (d) Bonus earned by Contractor for meeting the provisions of Paragraph A-12 shall be paid by Owner within ten (10) days of invoicing.

A-13 Arbitration

A.13.1 All claims, disputes and other matters in question arising out of, or relating to, this Contract or the interpretation or breach thereof, shall be decided by arbitration in Los Angeles, California, in accordance with the then-pertaining Rules of the American Arbitration Association, unless the parties mutually agree otherwise. Three arbitrators shall be chosen, all of whom shall be neutral and impartial. A determination by a majority of the panel shall be binding. Reasonable discovery shall be allowed in arbitration.

A-13.2 Notice of the demand for arbitration shall be filed in writing with the other party to this Contract and with the American Arbitration Association.

A-13.3 The award rendered by the arbitrators shall be final and judgment may be entered in accordance with applicable law and in any court having jurisdiction thereof.

Accordingly, the parties have executed this Agreement effective the date first above written.

CONTRACTOR:

UNITED ENGINEERS & CONSTRUCTORS INC.
STEARNS-ROGER DIVISION

OWNER:

PERCON PRODUCTION, INC.

GENERAL CONDITIONS

GC-1 Method and Manner of Performance

GC-1.1 Contractor shall be an independent contractor, and neither Contractor or its subcontractors, nor their respective employees, shall be deemed to be the employees or agents of Owner.

GC-1.2 Contractor's obligations under this Agreement run to and are for the benefit of Owner only and not third parties.

GC-2 Plans, Specifications, and Drawings

GC-2.1 Contractor will submit plans, specifications, and drawings to Owner for approval. Owner's approval shall be indicated by the signature of Owner's designated representative following the word "approved" and the date of the approval, all of which shall be conspicuously displayed on each plan, specification, or drawing approved. All Owner approvals shall be provided within two (2) days after receipt of plans, specifications, or drawings or approval shall be deemed effective upon expiration of such period.

GC-2.2 Contractor will furnish to Owner within thirty (30) days after Contractor's receipt of final payment, or upon termination of this Agreement, the original and all copies of plans, specifications, and drawings except one (1) record copy of each to be retained by Contractor. The plans, specifications, and drawings are neither intended nor represented to be suitable for use by Owner or others on extensions of the Work or on any other project. Any such use without specific written approval and adaptation by Contractor shall be at Owner's sole risk, without liability to Contractor, and Owner releases and agrees to indemnify and defend Contractor from and against all loss, cost, damage, and expense, including attorneys' fees, resulting therefrom. The record copy of plans, specifications and drawings retained by Contractor shall be held strictly pursuant to the terms of the Secrecy Agreement between Owner and Contractor dated June 28, 1988.

GC-2.3 During the Work, Contractor may review and comment upon vendors' or subcontractor's plans, specifications, and drawings. Such review and comment shall not relieve vendors or subcontractors from their sole responsibility for their work and for compliance with applicable procurement and subcontract documents.

GC-2.4 All models which pertain to the Work shall be delivered to Owner upon request.

GC-3 Changes

Owner may desire changes to the Work. Upon written notification thereof and Contractor's written consent thereto, Contractor shall perform such changes. Contractor shall be reimbursed the Reimbursable Costs and Fee attributable thereto, and the Fixed Fee and the estimated time for completion shall be revised accordingly for such changes and for any other cause beyond the reasonable control of Contractor.

GC-4 Scheduling and Progress Reports

GC-4.1 Contractor shall prepare and submit to Owner an estimated schedule of engineering, procurement, and construction necessary to complete the Work by the estimated completion date.

GC-4.2 On or before the fifteenth (15th) day of each calendar month while the Work is in progress, Contractor will prepare and submit to Owner a progress report containing an estimate of the total cost to complete the Work, giving effect to any project cost forecasts, and a comparison of such costs with the current estimate controlling completion of the Work.

GC-4.3 Contractor shall prepare and submit to Owner a project procedure manual which will define the procedures to be followed in prosecution of the Work, arrange for the flow of information between Owner's and Contractor's Project organizations, and otherwise describe the activities necessary to control the Work. The project procedure manual shall be subject to review and approval by Owner and will be modified by mutual agreement as necessary during the Work.

GC-5 Records and Accounting

GC-5.1 Contractor shall maintain its standard cost accounting records as required for proper financial management of the Work. Upon Owner's request, Contractor will furnish these accounting records in a form consistent with Owner's accounting system. All audits desired by Owner shall be completed within the one-year period following the date of the invoice of the item of Reimbursable Cost being audited, and shall exclude costs covered by Contractor's fee, standard rates, and costs expressed in terms of percentages of other costs.

GC-5.2 The representatives designated by Owner shall be afforded access to the site and to Contractor's Project books and records of account, instructions, specifications, drawings, receipts, and vouchers relating to the Work.

GC-6 Non-Discriminatory Employment Practices

Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. Contractor will take affirmative action so that qualified applicants are employed and that employees are treated without regard to their race, religion, color, sex, age, or national origin. Such action shall include the following: employment, promotions, demotions, transfers, recruitment or recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

GC-7 Subcontracts

No part of the Work shall be subcontracted by Contractor without approval by Owner, except Work subcontracted to affiliates of Contractor. If Work is subcontracted to affiliates, such affiliates shall comply with and benefit from all provisions of this Agreement applicable to its portion of the Work including, but not limited to, those defining Reimbursable Costs and Fee, insurance, indemnification, invoicing, payments, and Contractor responsibility; provided, however, that the aggregate of all of Contractor's and its affiliates' obligations, responsibilities, or indemnities shall not be increased by such subcontracts.

GC-8 Clean-Up

During construction Contractor will keep the Work site clean and orderly, removing rubbish and debris from its operations as often as may be required for safety. Upon completion of the Work, Contractor will promptly remove its equipment, temporary structures, and excess material from Owner's property, unless Owner otherwise directs, and leave the Work site in a clean and orderly condition.

GC-9 Start-Up of Project

GC-9.1 Contractor shall advise Owner in writing when, in Contractor's opinion, Owner's operating staff may start operating all or a part of the Project. Owner will designate a representative to witness and be present during start-up. Contractor will coordinate the provision of vendor mechanics and electricians available to make necessary adjustments to the equipment and to the electrical circuits during start-up and shall arrange for the services of such additional vendor technical personnel as Owner may desire to assist Owner in preparation for and during start-up.

GC-9.2 Owner's personnel shall perform the actual functions in operating the Project, or the portion thereof, being started. Contractor will recommend appropriate written start-up

procedures to Owner's representative. Owner may or may not follow Contractor's recommendations as it decides in the exercise of Owner's discretion.

GC-10 Force Majeure

A delay or default in performance under this Agreement by Contractor shall not constitute default hereunder to the extent resulting from or caused by occurrences beyond the reasonable control of Contractor or its Subcontractors; changes ordered in the Work and other effects of acts or omissions by Owner; acts or omissions of other contractors (excepting subcontractors of Contractor) whether or not employed by Owner; acts of God; storms; floods; fires, explosions, or other casualty losses; unusual weather conditions; strikes, boycotts, lockouts, or other labor disputes; or delays or failure in transportation and delivery of material and equipment; or acts or omissions of the public enemy or any government, its agencies or officers, federal, state, or local.

GC-11 Indemnification

GC-11.1 Contractor agrees to indemnify and save Owner harmless from any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of Contractor, its agents, employees, or Contractor's affiliates in connection with the Work.

GC-11.2 Owner agrees to indemnify and save Contractor harmless from any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of Owner, its agents, or employees in connection with the Work.

GC-11.3 If the negligence or willful misconduct of both Contractor and Owner (or a person identified above for whom each is liable) is the sole cause of such damage or injury, the loss, cost, and expense shall be shared between Contractor and Owner in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.

GC-12 Insurance

GC-12.1 Contractor shall obtain, for the mutual benefit of Owner and Contractor, the insurance herein specified.

GC-12.2 Contractor shall obtain and keep in force during the course of the Work and until transfer of care, custody and control to Owner pursuant to Section A-6, a builder's Broad Form All Risk or equivalent insurance policy covering Work in the course of construction including all rigging, material, supplies and equipment furnished for the Work at the Project site or in transit thereto, including resultant damage arising from faulty material, errors in design, or faulty workmanship, insuring Owner, and Contractor and its subcontractors as their interests may appear. Such policy shall contain a waiver of subrogation by the insurer in favor of such insureds and shall be maintained to cover the value of the Work at risk not to exceed twenty-five million dollars (\$25,000,000), subject to a deductible of ten thousand dollars (\$10,000) per occurrence. The deductible amount shall be a Reimbursable Cost. If Owner so desires, Owner will instead obtain and keep equivalent insurance in force during the course of the Work but, in such event, Owner will first so advise Contractor, in writing, will add Contractor and its lower tier contractors as additional insureds thereon, and will furnish a copy of such policy to Contractor. The aggregate liability of Contractor, and its subcontractors and vendors of any tier, and their respective directors, officers, employees, agents and representatives for the loss and damage described in this GC-12.2 shall in no event exceed the proceeds of the insurance described in this Section GC-12.2, regardless of whether carried by Owner or Contractor.

GC-12.3 With respect to property owned by or in the care, custody or control of Owner at the Project site or adjacent thereto, Owner hereby releases, and agrees to defend and indemnify Contractor, and its subcontractors and vendors of any tier, and their respective directors, officers, employees, agents and representatives from and against all loss and damage thereto.

GC-12.4 Other insurance to be procured by Contractor shall be as follows:

GC-12.4.1 Workers' Compensation insurance as required under laws applicable to the Work and Employers Liability insurance with limits of five hundred thousand dollars (\$500,000.00), which shall cover all of Contractor's employees engaged in the Work. All subcontracts shall include an equivalent undertaking by subcontractors.

GC-12.4.2 Comprehensive General Liability insurance (including blanket contractual liability coverage) and Automobile Liability insurance, covering all owned and non-owned, registered automobiles or trucks used by or in behalf of Contractor, with combined single limits for bodily injury and/or property damage in the amount of one million dollars (\$1,000,000) and one million dollars (\$1,000,000) aggregate.

GC-12.5 If Owner fails to adhere to the provisions of GC-12 applicable to it, or chooses to self-insure the risks described herein, Owner hereby indemnifies and holds Contractor and its lower tier contractors harmless from all loss, cost, damage, and expense arising therefrom.

GC-13 Warranties

GC-13.1 Contractor shall perform the Work in accordance with generally accepted engineering and construction principles and practices. Contractor shall provide all corrective engineering and construction services within the original scope of work necessary to conform the Work to the foregoing standard of care, provided that such a deficiency results from Contractor's failure to observe and adhere to the above and that Contractor is notified in writing within thirty (30) days after discovery of same by Owner and within the one (1) year period after the date of Final Acceptance of the Work, or the date upon which Owner has actual knowledge or, in the exercise of reasonable care should have knowledge, of the existence of any claim, whichever shall last occur, but in no event shall any claim be brought by Owner against Contractor subsequent to November 1, 1991.

GC-13.2 All costs incurred by Contractor in performing such corrective services not exceeding ten percent (10%) of Reimbursable Costs, shall be reimbursable under this Agreement, but no fee shall be earned or paid for such services. To the extent, if at all, the costs of such corrective services exceed ten percent (10%) of Reimbursable Costs, Contractor shall bear all such costs to a maximum cost to Contractor of one million dollars (\$1,000,000.00).

GC-13.2 Contractor shall demand from all subcontractors and vendors suitable warranties with respect to services, materials, and equipment, and to the extent obtainable, all subcontracts and purchase orders shall stipulate that the warranties shall inure to and be enforceable by Owner as well as Contractor. Contractor's liability with respect to services, materials, and equipment provided under each subcontract or purchase order is limited to demanding such warranties and assisting Owner in enforcing same to their full extent, and Contractor's costs in connection therewith shall be reimbursable costs.

GC-13.3 The warranties set forth in this Section are the only warranties made by Contractor and are in lieu of all other warranties, express or implied, and THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED. The provisions of this Section state the extent of Contractor's liability for errors, omissions, and deficiencies in the Work.

GC-14 Laws, Codes, Rules and Regulations

Laws, codes, rules, and regulations promulgated by governmental agencies or other authorities in effect and available on the effective date of this Agreement which may apply to Contractor's Work are subject to differing and possibly conflicting interpretations. Contractor shall use reasonable efforts to comply with applicable promulgations during Contractor's performance of the Work, and shall consult and mutually agree with Owner concerning any significant questions which may arise with respect to such regulations. From and after the earlier of (a) the taking of care, custody and control by Owner of the Work or portion of it, or (b) acceptance of the Work pursuant to Section A-6 hereof, Owner shall be responsible for compliance of the affected portion of the Work with applicable promulgations and hereby releases and agrees to indemnify, defend, and hold Contractor harmless from and against all claims, loss, and liability in relation to such promulgations arising on account thereof.

GC-15 Patents and Patent Infringements

GC-15.1 Where Contractor at its discretion uses the product of a particular manufacturer, Contractor shall demand for the protection of Owner and Contractor, suitable indemnity agreements for patent infringements.

GC-15.2 Owner shall be responsible for all payment of royalties and license fees and shall defend all suits for claims for infringement of any patent rights where Owner specified a particular process, design, drawing, or product of a particular manufacturer or licensor.

GC-16 Proprietary Information

GC-16.1 Owner and Contractor shall keep confidential all documents delivered to each by the other party which bear thereon a "confidential" or "proprietary" designation (Proprietary Information). In the event either party is required to produce Proprietary Information pursuant to subpoena issued by others, the party subpoenaed will promptly notify the party that designated the Proprietary Information in order to provide an opportunity for appropriate protective action.

GC-16.2 The following information shall not be subject to the provisions of GC-16.1:

GC-16.2.1 Information in the public domain through no action of Owner or Contractor in breach of this Agreement;
or

GC-16.2.2 Information independently developed by or, at the time of receipt, in the possession of, the party receiving the Proprietary Information; or

GC-16.2.3 Information acquired by Owner or Contractor from third parties which the acquiring party reasonably believes is not delivered in breach of confidentiality agreements which said third parties may have with Owner or Contractor.

GC-16.3 Neither party shall use the other's name in its financing documents or otherwise without specific prior written approval by the other party.

GC-17 Title to Material and Equipment

Title to all material and equipment procured by Contractor to be incorporated into the Project, shall pass to Owner upon delivery to common carrier or at the Project site, whichever is provided for in the purchase order.

GC-18 Liens

Contractor shall pay its employees, suppliers, and its subcontractors used by Contractor in the performance of the Work. To the extent of funds provided by Owner for the following purpose pursuant to A-5, Contractor shall maintain the Project free from mechanics' liens filed by such parties.

GC-19 Damages

- GC-19.1 Under no circumstances shall Contractor, its subcontractors and vendors of any tier, or their respective directors, officers, employees, or agents be liable or held responsible for consequential, incidental, special, or indirect loss or damage or loss of use of the Project or of adjacent facilities, loss of product, cost in excess of estimated cost, cost of replacement or substitute facilities, financing cost, or loss of interest, earnings, revenue, profits, claims of customers of Owner, or amounts in settlement.
- GC-19.2 Notwithstanding anything to the contrary in this Agreement, the total and cumulative liability of the Contractor, its subcontractors and vendors of any tier and their respective directors, officers, employees, agents and representatives arising from or relating in any way to the Project shall in no event exceed in the aggregate an amount equal to one million five hundred thousand dollars (\$1,500,000.00), and Owner assumes any excess liability.

GC-20 Interpretation

- GC-20.1 This Agreement shall be construed, and the rights and duties of the parties determined, in accordance with the laws of the State of Nevada. Owner's remedies concerning the Work shall be limited to those expressly specified in this Agreement.
- GC-20.2 It is agreed that any failure by either party at any time, or from time to time, to enforce or require the strict keeping and performance by the other party of any of the terms and conditions of this Agreement shall not constitute a waiver by such party of the particular terms and conditions in any way, or the right of the party to avail itself of any remedy it may have for any breach or breaches of them.
- GC-20.3 Titles of Articles and subparts of this Agreement are used solely for the convenience of the parties and shall not be used for the interpretation of this Agreement. All references to time in this Agreement shall be computed in calendar days.
- GC-20.4 Releases from, indemnities against, limitations on, and assumptions of liability and limitations on remedies expressed in this Agreement shall apply even in the event of the fault, negligence, or strict liability of the party released, indemnified, or whose liability is limited or assumed or against whom remedies are limited.

EXHIBIT "A"

REIMBURSABLE COSTS

Contractor shall be reimbursed by Owner for all costs, charges and expenses reasonably and necessarily incurred or expended by Contractor in the performance of the Work. Without limiting in any way the generality of the foregoing, but as an aid in determining the type of costs, charges and expenses for which reimbursement will be made subject to mutually agreed upon procedures, Contractor shall be reimbursed for the following:

(a) Labor Costs

Contractor's direct labor costs for personnel directly engaged in the performance of the Work, or traveling therewith, except officers of Contractor's parent organization other than the Project Manager, in accordance with Contractor's established practices. Labor Costs shall also include fees and salaries paid to temporary independent contract or Job-Shop personnel (not being employees of Contractor) working in Contractor's premises or project offices under Contractor's supervision as required for the performance of the Work.

(b) Payroll Additives and General Overhead Costs

1. Non-Manual Personnel

- 1.1 For project management, engineering, procurement, project control, home office and support services personnel, payroll additives and general overhead costs to Contractor of performing the Work which include payroll taxes and personnel benefits, payroll insurance, the maintenance and operation of Contractor's established offices, and the general staffing of the same with personnel other than those engaged directly in the performance of the Work, shall be reimbursed an amount equal to seventy-five percent (75%) of the non-manual Labor Costs, based on normal and overtime working hours, excluding premiums on overtime, as defined in (a) above.
- 1.2 For construction supervision and construction staff personnel, payroll additives and general overhead costs to Contractor of performing the Work which include payroll taxes and personnel benefits, payroll insurance, the maintenance and operation of Contractor's established offices, and the general staffing of the same with personnel other than those engaged directly in the performance of the Work, shall be reimbursed an amount equal to fifty percent (50%) of the non-manual Labor Costs, based on normal and overtime working hours, excluding premiums on overtime, as defined in (a) above.

2. Manual Personnel

Payroll additives only will apply to manual personnel at actual cost for payroll taxes and insurance, (federal and state unemployment taxes, social security, worker's compensation and comprehensive general liability insurance, pension, health and accident insurance,

(c) Office Materials, Equipment and Supplies

The costs of all material and supplies used or consumed directly in the performance of the Work, such as, but not limited to, blueprints, photo-stats, and other reproduction costs, drafting paper, special report binders and the like, including the cost of items customarily classified as general office supplies, also computer and software charges at current rates, and the costs of models and office equipment specifically used in connection with the performance of the Work. These costs will be made at actual cost or at Contractor's established rates.

(d) Travel, Relocation and Subsistence

Travel, living expenses and living allowances for all personnel who travel away from their home base in connection with Work; also payments made by Contractor other than salary in compliance with personnel assignment agreements for personnel working in connection with the Work, including local living allowances, transportation and return, allowances for subsistence in transit, moving and settling-in, shipment of household and personal effects, schooling allowances, passports, visas, medical examinations and similar expenses, all in accordance with Contractor's established practices.

(e) Consultant's Fees and Outside Service Costs

Fees and other expenses, including transportation expenses, paid to consultants as may be required in connection with the Work and all expenses incurred for any other outside services required in connection with the performance of the Work, in accordance with established procedures.

(f) Communications Costs

The cost of all communications incurred directly in the performance of the Work, including long distance telephone, telefax, express mail, telegraph, cable, telex and postal expenses.

(g) Social Legislation, Taxes and Duties

1. The costs and expenses to Contractor of whatever kind incurred in complying with the provisions of any laws or regulations relating to payments to be made to or for the benefit of its personnel or to any government agency levied or assessed directly in connection with the performance of the Work, other than U.S. and State income taxes and Worker's Compensation Insurance.
2. The cost of all taxes, permits, licences, fees, levies, imposts, duties, excises and other assessments directly incurred in connection with the performance of the Work.

(h) Project and Site Offices, Camps and Support Facilities

The costs and expenses incurred by Contractor in establishing, furnishing, equipping, maintaining and operating the project field offices, offsite project offices and trans-shipment points (other than Contractor's estab-

Digitized by the Edward W. Hunter Law Library, J. Reuben Clark Law School, BYU
Machine-generated OCR, may contain errors

(i) Equipment, Materials and Supplies

The cost of plant equipment, materials, tools, utilities and supplies procured or furnished by Contractor in connection with the performance of the Work, also the cost of transportation thereof including the costs of loading, unloading, demurrage, warehousing, storing, packing, handling charges, insurance premiums, agency fees and commissions, port charges, export and import licenses, import duties and other excises and the cost of operation, maintenance and repair. Included are fees and expenses of manufacturers field consultants, erector and "start and test" personnel.

(j) Construction Equipment and Tools

The cost of construction equipment or tools in connection with the performance of the Work, also the cost of transportation thereof including the costs of loading, unloading, demurrage, warehousing, storing, packing, handling charges, insurance premiums, agency fees and commissions, port charges, export and import licences, import duties and other excises and the cost of operation, maintenance and repair.

(k) Services by Others

1. The costs and expenses in connection with contracts and sub-contracts entered into by Contractor with third parties for the performance of any of the Work including all payments made to such contractors and sub-contractors in accordance with the provisions of such contacts and sub-contracts and settlements made with such contractors and subcontractors.
2. Contractor may subcontract portions of the Work to its parent organization, subsidiaries or affiliates of its parent organization. Payments made to the parent, such subsidiaries and/or affiliates to reimburse them for costs incurred in the performance of the Work shall be reimbursed to Contractor directly, but only to the extent and in the manner that payment would be made to Contractor if it had itself performed that portion of the Work.

(l) Personnel Services

The cost of recruiting, processing and employing personnel specifically for performance of the Work.

(m) Legal

Legal fees, expenses, and judgments incurred in connection with the Work, including any such costs arising out of litigation between Owner and others, whether Contractor is involved in third party proceedings or not, but only if Contractor is not at fault.

(n) Insurance

Premiums and other costs in connection with policies of insurance, fidelity and other surety bonds obtained by Contractor in connection with the performance of the Work.

(o) Losses and Damages

Losses and damages actually suffered and any related expenses incurred by Contractor in connection with or arising out of the performance of the Work and not compensated for by insurance, but excluding losses or damages due to negligence or willful misconduct of Contractor's officers or Project Manager having supervision over the Work as a whole.

(p) Royalties

The costs of all royalties paid in connection with the Work.

(q) Other Costs

Any and all other costs and expenses incidental to and reasonably necessary for the performance of the Work.

EXHIBIT "B"

BASIS FOR TARGET COMPLETION SCHEDULE

The following assumptions will apply to the Target Completion date:

1. Site Selection and access to new site is on or before six (6) months prior to Target Completion date.
2. Permitting requirements will not delay any aspect of the Work.
3. Process and Design Criteria requirements will be provided and "frozen" by Owner on or before six (6) months prior to Target Completion date.
4. Single-source procurement for process equipment will be utilized.
5. Approvals for engineering, design, procurement and construction will be made by Owner according to procedures established by mutual agreement between Owner and Contractor. No third party approvals will be required prior to proceeding with Work.
6. Overtime and shift work will be utilized by Contractor when possible.
7. The term "Target Completion" shall mean the date the facilities and process equipment for the initial production of ammonium perchlorate (at approximately fifty percent (50%) of design capacity, utilizing purchased sodium chlorate) will be energized, pre-operationally tested and ready for the introduction of raw materials for ammonium perchlorate production by Owner. It is recognized that construction work for the full operational capacity plant will continue in the plant and process areas after the initial production facilities are turned over to the Owner. For the purpose of meeting the Target Completion date, it is assumed these construction activities will not impact the date the Owner can proceed with the initial operations.
8. Power supply from the public utility company will be available at the site on or before three (3) months prior to Target Completion date.
9. A water supply will be available on or before four (4) months prior to Target Completion date.

CLIENT DISCLOSURE SECRECY AGREEMENT

PEPCON Production, Inc. ("Company") agrees to disclose to Stearns-Roger Division, United Engineers & Constructors, Inc. ("S-R") certain confidential and proprietary technical information and data of the Company for the purpose of discussing (and at Company's direction, S-R's performance of services relating to) design, engineering and construction of a plant for the manufacture of sodium perchlorate and ammonium perchlorate.

1. Company shall disclose to S-R such of its confidential and proprietary technical information of the type and for the purpose mentioned above, which is marked "confidential" or with a similar marking ("Information"), as it deems appropriate, provided that S-R agrees to receive all Information in confidence, not to use Information for its own benefit (except for the purpose stated above) or for the benefit of any third party, and not to disclose any part of the Information to any third party without the company's prior written consent. In order to be deemed "Information", oral disclosures of confidential and proprietary information shall be so characterized at the time of disclosure, and shall be confirmed in writing by Company within five (5) working days after disclosure. It is further understood that all of the Information provided hereunder remains the property of Company, and S-R agrees to return to Company, on demand, any and all information and documents furnished hereunder; provided, however, that S-R may keep a record copy of same, subject to the terms and conditions of this Agreement.

2. The foregoing obligations regarding confidentiality and non-use shall not apply to any Information which:

a. was previously known to S-R before receipt from Company;

b. now or hereafter becomes available to the public through no fault of S-R;

c. is subsequently disclosed to S-R without restriction by a third party which S-R reasonably believes has the lawful right to disclose such Information; or

d. is independently developed by S-R.

3. It is further agreed and understood that, even if relieved of the obligations of confidentiality and non-use by the exceptions recited above, S-R shall still retain in confidence the fact that Information supplied hereunder was obtained from Company, as well as any correlation, identity, similarity, or relation between (a) the Information acquired from Company, and (b) Information which may become part of the public domain or which may be received from a third party.

4. It is further understood that the disclosure hereunder does not carry with it any right or license to use or practice any of Company's intellectual property, including Information, improvements, developments, inventions, patents, trade secrets, and know-how, except for the purposes stated herein.

5. The signatories hereto personally warrant and represent that they have been authorized to sign this Agreement and thereby to bind their respective employers.

6. This Agreement covers the entire understanding between the parties, shall be interpreted and construed under the laws of the State of Colorado, and both parties intend to be bound hereby. The obligations assumed by S-R hereunder shall terminate of their own accord three (3) years after the effective date of this Agreement.

The effective date of this Agreement shall be June 27, 1988.

ACCEPTED AND AGREED TO BY:

PEPCON PRODUCTION, INC.

BY:

Title Chairman S.E.C.

ACCEPTED AND AGREED TO BY:

STEARNS-ROGER DIVISION
UNITED ENGINEERS & CONSTRUCTORS,
INC.

BY:

Title Petroleum & Mining

ADDENDUM NO. 1
TO
AGREEMENT
FOR ENGINEERING, PROCUREMENT, AND CONSTRUCTION
BETWEEN
PEPCON PRODUCTION, INC.
AND
UNITED ENGINEERS & CONSTRUCTORS INC.,
STEARNS-ROGER DIVISION
U/S-R PROJECT NO. 9079.001

A-1 (Amendment to Agreement Paragraph A-1): "Completion of the Project" as stated in Paragraph A-1 shall include the undertaking on the part of the Contractor to assure that the Project will produce ammonium perchlorate meeting the chemical and physical specifications for ammonium perchlorate specified in Morton Thiokol Specification No. STW 4-2602 as described in Exhibit A-1:(i) attached hereto and incorporated herein by this reference, as determined by laboratory testing conducted by Morton Thiokol, Inc., or such other testing facility as is approved by PPI, Contractor and Morton Thiokol, Inc.

AMENDMENT TO AGREEMENT FOR ENGINEERING,
PROCUREMENT, AND CONSTRUCTION

THIS AMENDMENT TO AGREEMENT FOR ENGINEERING, PROCUREMENT, AND CONSTRUCTION, dated as of March 3, 1989 (this "Amendment"), by and between WESTERN ELECTROCHEMICAL COMPANY, a Delaware corporation ("Owner"), and UNITED ENGINEERS & CONSTRUCTORS INC., Stearns-Roger Division, a Delaware corporation ("Contractor"),

W I T N E S S E T H:

WHEREAS, PEPCON Production, Inc., a Nevada corporation ("PEPCON Nevada"), and Contractor entered into that certain Agreement for Engineering, Procurement, and Construction, dated on or about June 28, 1988 (the "Construction Agreement"), providing for, among other things, the construction by Contractor of a manufacturing facility which will produce ammonium perchlorate and certain other products (the "Project"); and

WHEREAS, PEPCON Nevada and PEPCON Production, Inc., a Utah corporation ("PEPCON Utah"), entered into that certain Merger Agreement, dated as of September 15, 1988, pursuant to which PEPCON Nevada was merged with and into PEPCON Utah, with PEPCON Utah surviving the merger and obtaining all rights and assuming all obligations of PEPCON Nevada under, among other things, the Construction Agreement; and

WHEREAS, PEPCON Utah and Pacific Engineering & Production Co. of Nevada, Inc., a Nevada corporation ("PE") entered into that certain Assignment and Assumption Agreement, dated as of March 1, 1989, pursuant to which PEPCON Utah assigned all of its right, title and interest under the Construction Agreement to PE, and PE assumed all of PEPCON Utah's obligations under the Construction Agreement; and

WHEREAS, PE and Owner have entered into that certain Subscription Agreement, dated as of March 2, 1989, pursuant to which PE has assigned all of its right, title and interest under the Construction Agreement to Owner, and Owner has assumed all of PE's obligation under the Construction Agreement; and

WHEREAS, Security Pacific Bank Washington, N.A., a national banking association ("Lender"), and Owner intend to enter into that certain Loan Agreement, dated as of March 3, 1989 (the "Loan Agreement"), providing for a secured loan to Owner in a

principal amount of up to Ninety-Two Million Dollars (\$92,000,000) (the "Loan") for the purpose of financing the construction of the Project; and

WHEREAS, to facilitate such financing, Owner desires to amend certain provisions of the Construction Agreement, and Contractor is willing to do so, on the terms hereinafter set forth; and

WHEREAS, Contractor desires to amend certain provisions of the Construction Agreement, and Owner is willing to do so, on the terms hereinafter set forth;

NOW, THEREFORE, for and in consideration of the foregoing premises, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Owner and Contractor hereby agree as follows:

Section 1. Representations. In order to induce Owner to execute and enter into this Amendment, Contractor hereby represents that as of the date hereof:

(a) It has examined all material documents pertaining to the Work and accessibility to and general character of the site (the "Site") on which the Project is to be constructed.

(b) It has visited the Site, and has investigated and made such tests as it deems necessary to determine the conditions to be encountered in the Work (as defined below). It has satisfied itself as to the nature of the Work, the conditions of any existing buildings and structures at the Site, the condition of the soil, the character of the equipment and facilities needed prior to and during the the Work, the general and local conditions under which the Work is to be performed, the construction requirements and all other matters affecting the Work, and has conformed its observations with the requirements of the Contract Documents (as defined in Paragraph A-2 of the Construction Agreement).

(c) It is fully aware of the status of the plans, specifications and detailed architectural and engineering working drawings, more particularly described in Paragraph GC-2.1 of the Construction Agreement (the "Plans, Specifications and Drawings").

(d) It is experienced in major construction projects and has substantial experience in designing and constructing facilities similar in nature to the Project.

(e) Except as specified in Schedule 1 to Exhibit I hereto, all equipment and materials ordered or procured by Contractor prior to the date hereof from vendors and subcontractors in connection with the Work are covered by a standard warranty in the form set forth in Exhibit I hereto.

Section 2. Consent. Contractor hereby consents to the assignments and assumptions described in the recitals hereof, and acknowledges and agrees that Western Electrochemical Corporation, and only Western Electrochemical Corporation, shall be responsible for the observance and performance of all obligations and liabilities of "Owner" under the Construction Agreement.

Section 3. Definition of Work. Paragraph A-1 of the Construction Agreement is hereby amended by adding the following sentence to the end thereof:

"Completion of the Project" as stated in the first sentence of this Paragraph A-1 shall include the undertaking on the part of the Contractor, subject to the availability of sufficient funds, to assure that the Project will be capable of producing, whether or not such production shall have taken place, ammonium perchlorate meeting the chemical and physical specifications for ammonium perchlorate specified in Morton Thiokol Specification No. STW 4-2602B as described in Exhibit A attached hereto, as determined by laboratory testing conducted by Morton Thiokol, Inc., or such other testing facility as is approved by Owner, Contractor and Morton Thiokol, Inc.

Section 4. Exhibits. Paragraph A-2 of the Construction Agreement is hereby amended by deleting subparagraph A-2.4 in its entirety, by redesignating subparagraph A-2.5 as "A-2.12", and by adding the following subparagraphs after subparagraph A-2.3:

- A-2.4 Exhibit "B" - Morton Thiokol Specification
No. STW 4-2602B
- A-2.5 Exhibit "C" - Capital Cost Estimate
- A-2.6 Exhibit "D" - Plans
- A-2.7 Exhibit "E" - Specifications
- A-2.8 Exhibit "F" - Drawings
- A-2.9 Exhibit "G" - Application for Payment
- A-2.10 Exhibit "H" - Train A
- A-2.11 Exhibit "I" - Standard Vendor and Subcontractor
Warranty

In addition, the documents described above as Exhibits B through I, inclusive, are hereby added to the Construction Agreement as exhibits (so designated) in the forms attached

hereto. Owner and Contractor acknowledge that as of the date hereof the documents described above as Exhibits D, E and F are not yet complete. Owner and Contractor agree, therefore, that additions to such Plans, Specifications and Drawings (and any revisions thereof or of additions thereto) made at any time after the effective date hereof by Contractor, and approved by Owner, shall become part of said Exhibits D, E and F, respectively, without need of any further act or agreement of Contractor or Owner.

Section 5. Diligent Performance. The words "in accordance with the Contract Documents" are hereby added to the end of the first sentence of Paragraph A-3 of the Construction Agreement. In addition, the following sentence is hereby added to the end of Paragraph A-3 of the Construction Agreement: "Contractor's performance hereunder shall continue except and until such performance is precluded by any delays caused by Owner, and shall continue during the pendency of any dispute between Owner and Contractor; provided that Contractor is paid for performance of undisputed work in accordance with Paragraph A-5 hereof."

Section 6. Compensation. Paragraph A-4 of the Construction Agreement is hereby deleted in its entirety and replaced with the following:

A-4 Compensation

A-4.1 In consideration of Contractor performing the Work in accordance with the Contract Documents, Owner agrees to pay Contractor the costs incurred in the prosecution of the Work which shall consist of all Reimbursable Costs, plus a fee in the amount of Two Million Dollars (\$2,000,000.00) (the "Contractor's Fee"). Reimbursable Costs, as used in this Construction Agreement, is defined in Exhibit "A" attached hereto.

A-4.2 Contractor has provided to Owner and Owner has accepted a target cost (the "Target Cost") for completion of the Project, as defined in the Scope of Work in the January, 1989 estimate prepared by Contractor, in the amount of Seventy Million Dollars (\$70,000,000.00). Owner agrees to pay to Contractor, within ten (10) days after Final Acceptance of the Work by Owner, twenty five percent (25%) of the savings in the cost of the completion of the Project below the Target Cost (the "Target Cost Incentive Bonus"); provided that achievement of cost savings shall not adversely affect completion of the Project on or prior to the Target Completion Date (as defined below). The Target Cost amount does not include the Contractor's Fee or the Target Completion Date Incentive Bonus

(as defined below). The Target Cost does not include the cost of additional Comprehensive and General Liability insurance required by Owner beyond that specified in GC-12.4.2 of the Construction Agreement or additional builder's Broad Form All Risk Insurance required by Owner beyond that specified in GC-12.2 of the Construction Agreement and in place on January 1, 1989, or interest on delayed payments under Paragraph A-5.3 or interest on advance payments under Paragraph A-5.5. The Target Cost shall be adjusted for changes in the Scope of Work, in the January, 1989 estimate prepared by Contractor, approved by Owner in accordance with Paragraph GC-3.

A-4.3 Owner and Contractor agree to ~~a variable~~ ^{an} incentive bonus (the "Target Completion Date Incentive Bonus") to be payable to Contractor ~~and its personnel~~, within ten days after being earned, if Contractor achieves a target completion date of ~~May 15, 1989 and~~ June 22, 1989 (the "Target Completion Date") for the availability to Owner for initial operation of Train A as described on Exhibit H attached hereto. The Target Completion Date Incentive Bonus shall be Five Hundred Thousand Dollars (\$500,000.00). The Target Completion Date shall be subject to adjustments for changes approved by Owner in accordance with Paragraph GC-3.

A-4.4 The terms and conditions of the Target Cost Incentive Bonus and the Target Completion Date Incentive Bonus shall be agreed upon by Owner and Contractor within thirty (30) days of the execution of this Amendment and shall be subject to the review and approval of Morton Thiokol, Inc. ("MTI"). The incentive bonuses shall be designed so that no advantage may be obtained by a delay in achieving the Target Completion Date.

A-4.5 One Million Dollars (\$1,000,000.00) of the Contractor's Fee will be retained until the Project is completed in accordance with the Contract Documents (including, without limitation, the Plans and Specifications), and shall be paid in accordance with Paragraph A-5.7 hereof.

Section 7. Invoicing and Payment Paragraph A-5 of the Construction Agreement is hereby deleted in its entirety and replaced with the following:

A-5 Invoicing and Payment

A-5.1 As promptly as possible after the last day of each calendar week, and in no event more often than once per week, Contractor shall deliver to Owner, Security Pacific Bank Washington, N.A., a national banking association ("Lender"), and Woziwodski Architects, P.C. ("Construction Consultant") an

itemized application for payment of Reimbursable Costs incurred through the date of such application for payment, which, among other things, reflects the amount of all previous payments on a line item basis (an "Application for Payment"). ~~The submission of such Application for Payment shall estop Contractor from making any claim for extra compensation or other claim against the Owner of any nature through the date of such Application for Payment, except as specified in such Application for Payment.~~ All Applications for Payment shall be submitted substantially in the form of Exhibit G attached hereto. Owner, Lender and Construction Consultant shall have the right to inspect the Work and to review any documents or other data that any of them may reasonably require to approve any Application for Payment, including, without limiting the generality of the foregoing, payrolls for all labor, all receipted bills or vouchers, releases of lien and sworn statements from Contractor, all subcontractors and materialmen and any other documents or instruments, all in ~~a form satisfactory to Owner, Lender and Construction Consultant.~~ Upon receipt by Owner of Lender's approval of the Application for Payment, or of such portion of Reimbursable Costs set forth therein which are not in dispute, Owner shall pay Contractor the amount of such Reimbursable Costs, or of such undisputed portion thereof, less the aggregate amount of all previous payments made by Owner, on or before the date which is ten (10) days after the date such Application for Payment is submitted by Contractor as hereinabove provided.

appropriate
detail
CCW

A-5.2 In addition to, and together with, the Application for Payment, Contractor shall deliver to Owner, Lender and Construction Consultant a fee invoice for a portion of Contractor's Fee. Fee invoices shall be calculated at the rate of one and one-half percent (1-1/2%) of the Reimbursable Costs (less previous fee payments) payable pursuant to Paragraph A-5.1 hereof, provided that the portion of Contractor's Fee paid under this Section A-5.2 shall not exceed One Million Dollars (\$1,000,000). Fee invoices shall be paid by Owner in the same manner and at the same time as Reimbursable Costs.

as such
amount may
be adjusted
pursuant
to GC-3.

A-5.3 Amounts billed by Contractor for Reimbursable Costs which are not in dispute and Contractor's Fee, which are not paid within the ten (10) day period specified in Paragraph A-5.1 hereof, shall accrue interest charges at an annual rate of two percent (2%) over the prime lending rate (the "Prime Rate") of Contractor's principal banking institution (as such Rate is publicly announced by said institution from time to time), and such interest shall be a Reimbursable Cost. Such interest charge shall, until paid, be

added to each succeeding Application for Payment or Contractor's Fee invoice and shall not be subject to retention.

A-5.4 Should, for any reason, the Project or this Agreement be suspended or terminated due to Owner's inability to obtain financing, nonpayment of amounts payable under paragraphs A-5.1 or A-5.2 hereof or any other reason, all amounts due Contractor under Paragraphs A-5.1, A-5.2 and A-5.3 hereof shall, subject to the other rights of Owner hereunder, be payable by Owner to Contractor within ten (10) days of receipt of invoice.

A-5.5 Notwithstanding anything to the contrary contained in this Paragraph A-5, no advance payment, deposit or other payment made by Contractor, any subcontractor or material supplier for any equipment or materials shall be included within Reimbursable Costs unless and until such equipment or materials are delivered and suitably stored at the Site for incorporation into the Work. Any advance payments made by Contractor for equipment or materials which will be incorporated as part of the Project but which have not yet been delivered to the Site shall bear interest at two percent (2%) over the Prime Rate from the date the advance payment is made by Contractor until the date the amount is included in an Application for Payment pursuant to Paragraph A-5.1.

A-5.6 Final payment shall be made by the Owner to Contractor when (a) the Agreement has been fully performed by Contractor, except for Contractor's responsibility to correct defective or nonconforming Work, as provided in Paragraph GC-13 hereof, (b) a final Application for Payment and a final accounting of Reimbursable Costs have been submitted by Contractor and reviewed by the Owner, Lender and Construction Consultant and (c) Final Acceptance of the Work has occurred.

A-5.7 That portion of Contractor's Fee retained under Paragraph A-4.5 hereof shall not be payable by Owner until the later of (a) the expiration of any and all applicable time periods in which Contractor or any subcontractor or materialman may file a mechanic's or materialmen's lien or other lien against the Site, Work or Project following completion of the Work by Contractor and the Final Acceptance of the Work by Owner, and (b) the completion of all so-called "punchlist" items at the time of Final Acceptance of the Work.

Section 8. Release of Claims. Paragraph A-6.3 of the Construction Agreement is hereby deleted in its entirety and replaced with the following:

A-6.3. Subject in all events to the rights of Owner under Paragraphs GC-13 and GC-19.4 hereof, Final Acceptance of the Work by Owner shall constitute a release of all contract claims (other than warranty claims, and excluding any other types of claims including tort claims) by Owner against Contractor with respect to matters of which Owner has actual knowledge or in the exercise of reasonable care should have knowledge, at the time of Final Acceptance, except for items specifically reserved by Owner in writing at the time of Final Acceptance and, except as provided in Paragraphs GC-13 and GC-19.4 hereof, no action or proceeding in connection with a contract claim (other than warranty claims, and excluding any other types of claims including tort claims) shall be commenced against Contractor in connection with the Work after the expiration of one (1) year following Final Acceptance or the date upon which Owner has actual knowledge, or in the exercise of reasonable care should have knowledge, of the existence of any such claim, whichever shall last occur, but in no event (except as provided in Paragraphs GC-13 and GC-19.4 hereof) shall any such claim be brought by Owner against Contractor subsequent to November 1, 1991.

Section 9. Post-Acceptance Efforts. The following clause is hereby added to the beginning of Paragraph A-6.4 of the Construction Agreement: "Except for work done pursuant to the warranty contained in Paragraph GC-13".

Section 10. Without Cause Termination. The phrase ", with or without cause," is hereby added after the word "right" in Paragraph A-7.1 of the Construction Agreement. The words ", subject to any claims of Owner against Contractor" are hereby added after the words "date of termination" in Paragraph A-7.1.1 of the Construction Agreement.

Section 11. Assignment. The words ", inure to the benefit of and be enforceable by" are hereby added after the words "shall be binding upon" in Paragraph A-10 of the Construction Contract. In addition, the following sentence is hereby added to the end of said Paragraph A-10 of the Construction Agreement: "Notwithstanding the foregoing, Owner may, without the prior written consent of Contractor, assign all or any part of Owner's rights under this Agreement to Lender."

Section 12. Target Cost. Paragraph A-11 of the Construction Agreement is hereby deleted in its entirety.

Section 13. Target Completion Schedule. Paragraph A-12 of the Construction Agreement is hereby deleted in its entirety.

provided, however, that all disclaimers and limitations on remedies and liabilities shall apply to Lender

Section 14. No Arbitration. Paragraph A-13 of the Construction Agreement is hereby deleted in its entirety.

Section 15. Benefit of Obligations. The phrase "subject to the terms of Paragraph A-10," is hereby added to the beginning of Paragraph GC-1.2 of the Construction Agreement.

Section 16. Changes Without the Consent of Lender. The following sentence is hereby added to the end of Paragraph GC-3 of the Construction Agreement: "Notwithstanding anything to the contrary contained in the Contract Documents, no such change in the Work may be undertaken by Contractor without the prior written consent of Lender, if such change in the Work would result in an increase in Reimbursable Costs greater than Fifty Thousand Dollars (\$50,000), in any instance, or Two Hundred Thousand Dollars (\$200,000) in the aggregate."

Section 17. Schedule. The following sentences are hereby added to the end of Paragraph GC-4.1 of the Construction Agreement: "Such schedule shall provide for the expeditious and practicable execution of the work in accordance with the Contract Documents with a date for Completion of the Work not later than October 1, 1989; provided, however, that Contractor shall not be liable for damages or penalties for failure to meet such date. Furthermore, such schedule shall be revised by Contractor monthly and the initial schedule and all revisions thereto will be delivered by Contractor to Owner, Lender and Construction Consultant promptly after the preparation thereof."

Section 18. Progress Report. The words "an estimate" in Paragraph GC-4.2 of the Construction Agreement are hereby deleted and replaced with the words "a line item budget".

Section 19. Designated Representatives. The following sentence is hereby added to the end of Paragraph GC-5.2 of the Construction Agreement: "For purposes of this paragraph, Lender shall be deemed a designated representative of Owner, it being understood that as such representative, Lender shall not, except as contemplated in Paragraph A-10 hereof, have authority to direct the Work."

Section 20. Minimum Insurance. The words "not to exceed twenty-five million dollars (\$25,000,000)" in Paragraph GC-12.2 of the Construction Agreement are hereby deleted and replaced by the words "such insurance to be in an amount not less than Sixty Million Dollars (\$60,000,000)."

Section 21. Workers Compensation. The words "or such amount as is required under the Laws of the State of Utah, whichever is greater" are hereby added after the words "five

hundred thousand dollars (\$500,000)" in Paragraph GC-12.4.1 of the Construction Agreement.

~~Section 22. Liability Insurance.~~

(a) The words "one million dollars (\$1,000,000) and one million dollars (\$1,000,000) aggregate" are hereby deleted from Paragraph GC-12.4.2 of the Construction Agreement and replaced with the words "six million dollars (\$6,000,000) each occurrence and annual aggregate".

(b) The following provision is hereby added as Paragraph GC-12.4.3 of the Construction Agreement: "Excess Liability Insurance, with a combined single limit for bodily injury, including death, and property damage in an amount not less than ten million dollars (\$10,000,000), each occurrence and annual aggregate, in excess of the comprehensive general liability insurance so required under the foregoing Paragraph GC-12.4.2."

Section 23. Insurance. The following provision is hereby added as Paragraph GC-12.4.4 of the Construction Agreement: "All policies of insurance to be provided by Contractor hereunder shall be issued by insurance companies acceptable to the Owner and Lender and authorized to do business under the laws of the State of Utah. Furthermore all such insurance shall be in a form reasonably satisfactory to Owner and Lender, issued in the name of Contractor and shall include the Owner and Lender as additional insured parties. Furthermore, Lender shall be named as a sole loss payee under the property damage insurance specified in Paragraph GC-12.2 hereof and all losses related to the matters insured under such property damage insurance shall be adjusted with Owner and Lender. Certificates of such insurance shall be delivered to Owner and Lender by Contractor, along with evidence of full payment of the premium therefor. Each such certificate shall bear an endorsement waiving all rights of subrogation against the Owner and Lender, and waiving right of cancellation or reduction in coverage without thirty (30) days prior written notice thereof to be delivered by registered mail to Owner and Lender. Not less than thirty (30) days prior to the expiration or termination of any such policy, a renewal or additional policy shall be procured and maintained by Contractor and certificates thereof shall be delivered by Contractor to the Owner and Lender. If any policy is cancelled before Final Acceptance of the Work, and if Contractor fails to procure immediately other insurances as herein required, then Owner reserves the right to procure such insurance and to deduct the costs thereof from any sum due Contractor under the Contract Documents".

Section 24. Warranties. Paragraph GC-13 of the Construction Agreement is hereby deleted in its entirety and replaced with the following:

GC-13 Warranties

GC-13.1 All work done and all material and equipment furnished by Contractor shall conform to the Contract Documents and with generally accepted engineering and construction principles and practices. The acceptance at any time of materials by or on behalf of the Owner shall not be a bar to a future rejection thereof if they are subsequently found to be defective or inferior in quality or uniformity to the materials specified in the Contract Documents or not as represented to the Owner. Any material rejected, prior to Final Acceptance of the Work, by the Owner because of nonconformity with the Contract Documents shall be deemed to be defective and shall be removed at once from the Site by Contractor at its own expense, and the same shall not be used on or incorporated into the Work.

GC-13.2 As to any portion of the Work, Contractor hereby agrees, at its own expense and cost, to make all repairs, removals or replacements necessitated by defects in materials or workmanship supplied as part of the Work for a period of one (1) year from and after the earliest of (a) the date of the transfer by Contractor and the acceptance by Owner, in accordance with Paragraph A-6 hereof, of care, custody and control of any such portion of the Work, (b) the date that Owner has actual knowledge, or in the exercise of reasonable care, should have knowledge, of the existence of any defect, or (c) November 1, 1990. Contractor shall bear the cost of making good all Work destroyed or damaged by such correction or removal. Contractor also agrees to indemnify, defend and hold the Owner harmless from liability of any kind arising from direct damages due to said defects. Contractor shall make all repairs and replacements promptly upon receipt of a written order for same from the Owner. If Contractor fails to make necessary repairs and replacements promptly, the Owner may do the Work, and Contractor shall be liable for the costs thereof.

GC-13.3 The warranties furnished by Contractor in this Paragraph GC-13 shall not apply to deterioration, failure or destruction, or the consequences thereof, caused by normal wear and tear, corrosion or erosion incident to the normal operation of the Project, or from conditions different from design criteria, or by the failure of Owner to operate and maintain the Project properly.

GC-13.4 Contractor shall demand from all subcontractors and vendors, suitable warranties (in no event

less stringent than the warranty set forth in Exhibit I hereof) with respect to services, materials, and equipment, and to the extent obtainable, all subcontracts and purchase orders shall stipulate that the warranties shall inure to and be enforceable by Owner and its assignees as well as Contractor. Contractor's liability with respect to services, materials, and equipment provided under each subcontract or purchase order is limited to demanding such warranties and assisting Owner in enforcing same to their full extent, and Contractor's costs in connection therewith shall be Reimbursable Costs. Such assistance shall include, but shall not be limited to, the commencement and maintenance, in the name of Contractor, of such proceedings as Owner or its assignees may request from time to time, for the enforcement of any such warranties.

GC-13.5 All warranties given by Contractor under this Paragraph GC-13 shall inure to the benefit of Owner and its assignees and to any successor in interest to Owner's interest in the Work or the Project. Furthermore, all such warranties shall survive the completion of the Work and the termination of this Agreement.

GC-13.6 Other than with respect to claims of Owner which have not been released pursuant to Paragraph A-6.3 hereof, the warranties set forth in this Paragraph GC-13 are the only warranties made by Contractor and are in lieu of all other warranties, express or implied, and THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED. The provisions of this Paragraph GC-13 state the extent of Contractor's warranty liability for errors, omissions, and deficiencies in the Work.

GC-13.7 Contractor shall bear all costs in performing corrective services under this Paragraph GC-13 to a maximum cost to Contractor of one million dollars (\$1,000,000).

Section 25. Compliance with laws. The words "use reasonable efforts to" in the second sentence of Paragraph GC-14 of the Construction Agreement are hereby deleted.

Section 26. Liens. Paragraph GC-18 of the Construction Agreement is hereby deleted in its entirety and replaced with the following:

GC-18 Liens

Contractor shall pay its employees, suppliers and subcontractors in the performance of the Work. If any mechanic's or materialmen's lien or other lien shall be filed with respect to or shall attach in any way to the

site, the Project or the Work (except those caused by the Owner), Contractor shall either (a) pay the amount of such lien and secure a release and discharge thereof, to the extent of funds provided by Owner pursuant to Paragraph A-4 hereof, or (b) if permitted by Lender, which permission shall not be unreasonably withheld, contest, in good faith and by proper legal actions or proceedings, the validity of the claims of any mechanic, laborer, subcontractor, contractor or materialman ("Subcontractor Claim"). The costs incurred by Contractor in the observance and performance of the foregoing obligation shall be Reimbursable Costs except to the extent that such costs are attributable to the negligence or fault of Contractor. During the pendency of any such action or proceeding, payment of such contested Subcontractor Claim may be deferred provided that such contest operates to suspend collection of the contested Subcontractor Claim and such contest is maintained and prosecuted continuously and with diligence by Contractor, and Contractor has deposited with Owner an amount equal to the amount of such Subcontractor Claim as security for the full release and discharge of such claim. Notwithstanding any such security, Contractor shall pay any contested Subcontractor Claim, if, at any time, the Work, Project, or Site, or any portion thereof, shall be in danger of being forfeited or lost by reason of any such contest or by Contractor's nonpayment of any such Subcontractor Claim. If such action or proceeding is terminated or discontinued adversely to Contractor, Contractor shall immediately pay such sum as is necessary to fully release and discharge such Subcontractor Claim and shall deliver to Owner evidence satisfactory to Owner of Contractor's payment of such Subcontractor Claim. If Contractor fails to act in accordance with the requirements of this paragraph, then Owner may withhold from the progress payment or payments next due, or from final payment, any and all amounts necessary to pay and fully release and discharge any such Subcontractor Claim. If the Owner sustains any cost, expense or damage, including, but not limited to, attorneys' fees, as a result of the filing or asserting of a Subcontractor Claim or other claim or charge by Contractor or any subcontractors, their materialmen or any supplier furnishing labor or materials pursuant to or required by this Agreement, then Contractor shall be liable therefor and, in addition to its other remedies, the Owner may reimburse itself for such cost, expense or damage, including, but not limited to, attorneys' fees, out of any funds due Contractor. Furthermore, in order to permit a title insurance company to insure the validity and priority of the lien of any mortgage or deed of trust

which is given as security for the Loan, free and clear of any Subcontractor Claim, Contractor hereby agrees to indemnify, defend and hold such title insurance company harmless from and against any loss, cost or expense it may suffer in connection with the assertion of a Subcontractor Claim. In this regard Contractor agrees to execute and enter into an indemnification agreement, reasonably satisfactory to Contractor, if so requested by such title insurance company.

Section 27. Damages.

(a) The words "(but shall be liable and held responsible for all direct loss or damages)" is hereby added after the words "or indirect loss or damage" in Paragraph GC-19.1 of the Construction Agreement.

for the
one-year
warranty
period

(b) Paragraph GC-19.2 of the Construction Agreement is hereby deleted in its entirety and replaced with the following:

GC-19.2 Notwithstanding anything to the contrary in this Agreement, the total and cumulative liability of Contractor, its subcontractors and vendors of any tier and their respective directors, officers, employees, agents and representatives arising from or relating in any way to the Project shall in no event exceed in the aggregate an amount equal to the sum of (a) \$1,500,000, and (b) the amount of any proceeds of insurance required to be carried under Section 12.2 or Section 12.2.4 hereof (and paid for or reimbursable by Owner under this Agreement) to the extent that such proceeds are paid or payable to Owner or would have been paid or payable to Owner but for the failure of Contractor to obtain and keep in force such insurance.

It is the specific intent of Owner and Contractor that Owner be afforded only the insurance coverage required to be carried under GC-12 hereof to the extent that Owner has paid for or is required to reimburse Contractor therefor, and not more.

The foregoing limitation of liability shall apply to all claims other than warranty claims under this Agreement regardless of how any such non-warranty claim or liability arises, whether in contract, tort (including negligence), strict liability or otherwise.

(c) Paragraph GC-20.4 of the Construction Agreement is hereby renumbered and added as Paragraph GC-19.3 of the Construction Agreement.

(d) The following provision is hereby added as Paragraph GC-19.4 of the Construction Agreement: "In no event shall any provision of this GC-19 in any way limit, impair, abridge or affect the rights of Owner set forth in GC-12 or GC-13 hereof, including, without limitation, the prosecution of or collection under any warranty claim of Owner pursuant to a subcontract or purchase order as contemplated under GC-13.3 hereof."

Section 28. Governing Law. The word "Nevada" in Paragraph GC-20.1 of the Construction Agreement is hereby deleted and replaced with word "Utah".

Section 29. Equipment, Materials and Supplies. The following sentence is hereby added after the first sentence of Paragraph (i) of Exhibit A to the Construction Agreement: "Except for rentals, all such plant equipment, materials, tools, utilities and supplies shall be the property of Owner from and after the date of Final Acceptance of the Work."

Section 30. Construction Equipment and Tools. The following sentence is hereby added after the first sentence of Paragraph (j) of Exhibit A to the Construction Agreement: "Except for rentals, all such construction equipment and tools shall be the property of Owner from and after the date of Final Acceptance of the Work."

Section 31. Basis for Target Completion Schedule. Exhibit "B" of the Construction Agreement is hereby deleted in its entirety.

Section 32. Additional Covenants of Contractor. Contractor hereby covenants and agrees with Owner that:

(a) It shall cause qualified architects and engineers in its employ to approve the Plans, Specifications and Drawings.

(b) It shall construct the Project in accordance with the Plans, Specifications and Drawings and will complete the Project, lien free, free from all architectural, engineering and construction defects, in accordance with all applicable laws, codes, ordinances, rules and regulations (including, without limitation, environmental protection laws and building and fire safety codes) or, and interpretations thereof and positions taken with respect thereto (reasonably relied on by Contractor, and concurred in by Owner, in the performance by

Contractor of its obligations hereunder) by, any federal, state or local governmental entity having jurisdiction thereover. Compliance by Contractor with all applicable laws, codes, ordinances, rules and regulations, and interpretations thereof and positions taken with respect thereto, as referred to above, shall be determined separately with respect to each segregable portion of the Work as of the date care, custody and control of each such segregable portion is delivered to Owner in accordance with Paragraph A-6 hereof.

(c) Contractor shall maintain and preserve, and shall cause all subcontractors and vendors to maintain and preserve, all construction data (including, without limitation, daily log sheets and all bills and vouchers) relating to the Project and shall make available, and shall cause all subcontractors and vendors to make available, to Lender, Construction Consultant or any representatives thereof, on demand during normal business hours such construction data, all for a period of three (3) years after receipt of final payment by Contractor hereunder.

(d) For the benefit of Lender in the event that Lender provides financing to Owner with respect to the Project, Contractor shall not, for so long as any amounts shall remain unpaid by Owner to Lender in connection with such financing (except as contemplated in Paragraph A-4.4 hereof), enter into any amendment, modification, supplement, waiver, discharge or termination with respect to the Construction Agreement or this Amendment without the prior written consent of Lender.

Section 33. Effective Date. Each of the amendments to the Construction Agreement contained herein shall have effect as of and from the date of the Construction Agreement.

Section 34. Waivers. No failure on the part of Owner or Lender to exercise, and no delay in exercising, any right, power or remedy under this Amendment or under the Construction Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy by Owner or Lender preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 35. Amendments. No provision of this Amendment or the Construction Agreement may be amended, waived, discharged or terminated orally, but only by an instrument in writing specifically identifying this Amendment or the Construction Agreement, as the case may be, and specifying the provision intended to be amended, waived, discharged or terminated and signed by the party against which enforcement of the amendment, waiver, discharge or termination is sought, and then such

change, waiver, discharge or termination shall be effective only in the specific instance and for the specific purpose for which made or given. No provisions of this Amendment or the Construction Agreement shall be varied, contradicted or explained by any oral agreement or course of dealing or performance.

Section 36. Severability. If any provision of this Amendment or the Construction Agreement is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of Owner and Lender in order to carry out the intentions of the parties hereto as nearly as may be possible; and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 37. Survival. All agreements, covenants and representations made herein shall survive the execution and delivery of this Amendment.

Section 38. Headings. Headings used herein and in the Construction Agreement are for convenience only and are not to affect the construction of, or be taken into consideration in interpreting, this Amendment or the Construction Agreement.

Section 39. Execution in Counterparts. This Amendment may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same instrument.

Section 40. Governing Law. This Amendment and the Construction Agreement shall, in all respects, including all matters of construction, validity and performance, be governed by, and construed and enforced in accordance with, the laws of the State of Utah applicable to contracts entered into in that state between citizens of that state and to be performed wholly within that state without reference to any rules governing conflicts of laws.

Section 41. Full Force and Effect; Entire Agreement. Except as modified hereby, the Construction Agreement shall continue in full force and effect. The Construction Agreement, as amended by this Amendment, constitutes, on and as of the date hereof, the entire agreement of the parties hereto with respect to the subject matter hereof, and all other prior or contemporaneous understandings or agreements, whether written or oral, between the parties hereto with respect to the subject matter hereof are hereby superseded in their entireties.

IN WITNESS WHEREOF, the parties hereto have caused this
Amendment to be duly executed and delivered as of the date
first above written.

WESTERN ELECTROCHEMICAL COMPANY

By _____

Title _____

UNITED ENGINEERS & CONSTRUCTORS INC.,
STEARNS-ROGER DIVISION

By _____

Title _____



Tab 2

R. GLEN WOODS #444,
4746 South 900 East, Suite 210
Salt Lake City, UT 84117
Attorney for Petitioners

Address for Notices and Correspondence:
3770 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89109
Telephone: (702) 794-4504

JAN GRAHAM #1231
Attorney General
GALE K. FRANCIS #4213
Assistant Attorney General
Attorneys for Respondent
50 South Main, Suite 900
Salt Lake City, UT 84144
Telephone: (801) 536-8200

RECEIVED
MAY 05 1994
APPEALS SECTION
STATE TAX COMMISSION

BEFORE THE UTAH STATE TAX COMMISSION

STANDARD INDUSTRIAL STRUCTURES
CORPORATION,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

JOINT STIPULATION OF
FACTS

Case No. 92-1400

Account No. D67742

Tax Type: Sales and Use

ST. GEORGE STEEL FABRICATION,
INC.,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

Case No. 92-1775

Account No. C33761

Tax Type: Sales and Use

YEARGIN, INC. AND WESTERN
ELECTROCHEMICAL COMPANY

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

Case No. 93-0002

Account No. H-02516

Tax Type: Sales and Use

COME NOW the parties, by and through their respective counsel of record, and hereby stipulate that the following facts shall be taken as true for purposes of the cases captioned above:

Parties and Background

1. Petitioner Standard Industrial Structures Corporation ("Standard Industrial") was all times relevant hereto a corporation organized and existing and in good standing under the laws of the State of Texas and was duly qualified to transact business and in good standing as a foreign corporation under the laws of the State of Utah. Petitioner Standard Industrial Structures Corporation was a registered retailer in the State of Utah.

2. Petitioner St. George Steel Fabrication, Inc. ("St. George Steel") was at all times relevant hereto a corporation organized and existing and in good standing under the laws of the State of Utah. Petitioner St. George Steel was a registered retailer in the State of Utah.

3. Petitioner Yeargin, Inc. ("Yeargin") was at all times relevant hereto a corporation organized and existing and in good standing under the laws of the State of Delaware and was duly qualified to transact business and in good standing as a foreign corporation under the laws of the State of Utah.

4. Petitioner Western Electrochemical Company ("WECCO") was at all times relevant hereto a corporation organized and existing and in good standing under the laws of the State of Delaware and was duly qualified to transact business and in good standing as a foreign corporation under the laws of the State of Utah.

5. WECCO is a wholly owned subsidiary of Pacific Engineering & Production Co. of Nevada ("PEPCON") which, prior to May 4, 1988, operated an ammonium perchlorate ("AP") manufacturing facility in Clark County, Nevada. Prior to May 4, 1988 PEPCON was one of two domestic producers of AP. AP is a chemical that is essential to a variety of national defense and space exploration programs.

6. On May 4, 1988 a series of fires and explosions at the PEPCON AP manufacturing facility resulted in the total destruction of PEPCON's facility and the loss of approximately half of United States domestic AP production capacity.

7. After the May 4, 1988 fires and explosions the United States Department of Defense (the "DOD") and the National Aeronautics and Space Administration ("NASA") determined that it was essential to national security and space exploration that the Nation's AP production capacity be replaced as soon as possible.

8. After the May 4, 1988 fires and explosions PEPCON lacked sufficient funds with which to re-build or replace its AP manufacturing facility, and was unable to obtain conventional financing for this purpose. In order to expedite the replenishment of the Nation's AP production capacity, contractors of NASA and the DOD made certain financing available to Pepcon Production, Inc. ("PPI"), an affiliate of PEPCON. The terms of the financing prohibited the expenditure of the loaned funds to purchase "nonseverable" property, or real property.

9. The financing made available by contractors of NASA and the DOD was the sole source of construction funds for the AP facility until permanent financing was obtained, in March, 1989.

10. It was not possible to rebuild the AP manufacturing facility on the site that had been occupied by the PEPCON manufacturing facility. After a brief but intensive search a suitable site was located in Iron County, Utah, approximately 15 miles West of Cedar City. PPI purchased the site with its own funds because real property was not a permissible use of the construction funds. Construction began at the Iron County site in July, 1988 and proceeded under the terms of a DOD priority rating, pursuant to the provisions of the Defense Priority and Allocation System regulation (15 C.F.R. 350).

11. During construction a search for permanent financing continued. When construction was nearly complete permanent financing was obtained from Security Pacific Bank Washington, N.A. The permanent financing was closed on March 3, 1989. On that date the lender required that PEPCON form WECCO for the purpose of completing the construction of the facility and thereafter operating the facility. WECCO then succeeded PPI as the owner of the AP facility under construction. Initial production of AP at the new WECCO AP manufacturing facility occurred in August, 1989.

12. During the course of construction of the facility PPI and WECCO entered into an agreement with United Engineers & Constructors, Inc. and its affiliate, Yeargin, for the purpose of providing assistance in the engineering, design and procurement for the construction of the AP manufacturing facility. United Engineers assisted WECCO in purchasing materials for use in the construction of the facility and located suppliers, obtained price quotations and arranged for WECCO to make purchases of materials. Title to all materials purchased for use at the WECCO facility passed directly to WECCO from the suppliers.

WECCO AP Production Facility

13. AP is produced at the WECCO facility by electrochemical processes using WECCO's proprietary technology. The principal raw materials used in the manufacture of AP are electrical energy, salt, ammonia and hydrochloric acid. The AP manufacturing process begins with the electrolytic oxidation of sodium chloride to produce sodium chlorate. The sodium chlorate is then subjected to electrolytic oxidation to produce sodium perchlorate, which is stored for AP production. Concurrently, hydrochloric acid is combined in a reactor vessel with anhydrous ammonia to form ammonium chloride. The ammonium chloride is then combined with sodium perchlorate in a crystallizer to produce desired quantities of AP having the desired characteristics. The crystallization process is controlled to yield the particle size, particle shape, and particle size distribution desired. Process variables include duration, temperatures and process rates.

14. The crystallization process occurs in discrete batches, permitting AP to be tailored to individual specifications of WECCO's customers. When the crystallization is complete, the AP is stored in specially selected containers. The AP is then specially blended with other batches to produce homogenous lots that conform to customer specifications.

15. Finished and blended AP is shipped in 30-gallon drums or in 5,000-pound bins that are owned and furnished by customers. A by-product of the AP production process, the liquid from which the AP is crystallized, is subjected to additional processing, yielding salt and AP. The salt is recycled through the manufacturing process.

16. Products produced at the WECCO facility in addition to standard grades of AP include special grades of AP, anhydrous sodium perchlorate and sodium perchlorate solution, which is sold for use in explosive formulations, and potassium perchlorate and other perchlorate chemicals.

17. The WECCO manufacturing facility includes a laboratory building and an administration building, which constitute permanent improvements to realty. The laboratory and administration buildings are assessed and taxed by the Iron County Assessor as real property. Applicable sales and use taxes were duly paid with respect to materials used in the construction of the laboratory and administration buildings.

18. The WECCO manufacturing facility also includes approximately 16 steel structures some of which house particular items of manufacturing equipment. By agreement between WECCO, the Iron County Assessor and representatives of the Utah State Tax Commission these structures have been treated for property tax purposes as personal property, and have been taxed to WECCO as personal property each year since those structures were acquired.

Standard Industrial Structures Corporation

19. Standard Industrial Structures Corporation contracted with WECCO through United Engineers to supply materials and field erection for sixteen (16) specially designed pre-engineered steel buildings at the WECCO facility. Requirements for the steel were specified by United Engineers. Foundations were designed and provided by others. Standard Industrial charged separate prices for materials, fabrication and shipping, and for field erection.

20. The steel structures provided by Standard Industrial were designed to contain particular items of manufacturing equipment. In each case the cost or value of the steel structure is relatively small when compared to the cost or value of the equipment contained therein.

21. Work by Standard Industrial under the terms of the contract commenced October 21, 1988. Standard Industrial subsequently manufactured the materials for the steel structures and shipped and sold those materials to WECCO. Title to materials sold to WECCO passed to WECCO at the time the materials were delivered to WECCO's facility.

22. Each of the steel structures is attached to a concrete foundation by means of a series of nuts and bolts. The parts of the structures are similarly bolted together. The steel structures may be taken down, moved and re-erected at other locations when necessary without damage to the structures, and without diminishing their economic values or utility.

23. Acting on behalf of PPI and WECCO, Yeargin furnished to Standard Industrial an exemption certificate to the effect that the materials sold by Standard Industrial were for use in new or expanding operations in a Utah manufacturing facility. Standard Industrial did not charge or collect sales taxes on the materials it sold to WECCO.

St. George Steel Fabrication, Inc.

24. St. George Steel contracted with WECCO through Yeargin to supply materials and field erection for certain steel tanks at the WECCO facility. Specifications for the steel tanks were provided by United Engineers. St. George Steel charged a separate price in the case of each tank for materials, fabrication and shipping, and for field erection.

25. Much of the AP production process involves the handling of liquids. The steel tanks provided by St. George Steel were designed to contain various in-process liquids at various points in the manufacturing process. Those liquids include anhydrous ammonia, sodium chlorate and sodium perchlorate in solution, ammonium perchlorate in solution, salt in solution, hydrochloric acid and water. The steel tanks provided by St. George Steel are also used to combine and mix liquids during the manufacturing process.

26. In some cases the steel tanks supplied by St. George Steel were trucked to the WECCO site where they were then lifted off the trucks with a crane and set on concrete pads. In other cases the tanks were delivered to the site in sections, generally halves, which were then welded together at the WECCO site.

27. Each of the steel tanks sits without fasteners on a concrete pad or on concrete piers. The tanks are not attached to the pads or piers or in other fashion permanently attached other than by connection to piping and grounding devices to real property.

28. Acting on behalf of PPI and WECCO, Yeargin furnished to St. George Steel an exemption certificate to the effect that the materials sold by St. George Steel were for use in new or expanding operations in a Utah Manufacturing Facility. St. George Steel did not charge or collect sales taxes on the materials it sold to WECCO.

Yeargin, Inc. and Western Electrochemical Company

29. The raw materials used by WECCO to produce AP include anhydrous ammonia and hydrochloric acid. These raw materials typically arrive at the WECCO facility in railroad cars. The facility includes specially designed equipment for the unloading and processing of these raw materials. The raw materials are unloaded and conducted into tanks from which they are in turn conducted to other process vessels for use in the manufacture of AP.

30. The WECCO facility includes one 750,000 gallon water tank. Water for the tank is pumped from WECCO's well. Approximately 50 percent of the capacity of this tank is used for process water, and approximately 50 percent is reserved for fire protection for the facility.

31. Propane and natural gas are used at the WECCO facility to produce steam during the production process.

32. Containers owned by WECCO are used to hold AP that has been crystallized in discrete batches and is in the drying and blending processes. WECCO acquired bar code application and reading apparatus to assist in inventory control of batches and blends.

Physical Layout of WECCO Facility

33. Attached to this Stipulation of Facts and incorporated herein by reference as Exhibit "A" is a schematic map of the WECCO AP manufacturing facility. For purposes of

identification, certain structures have been identified by number designation and some by alphabetical designation.

34. Those structures identified with numbers 1 through 6 are identified with the Yeargin audit report. Specifically, structures 1 through 6 are referenced in Schedule 1 of the Yeargin audit report dated 9-17-92. The specific references are as follows:

a. Structure number 1 consists of three metal buildings, which are identified with invoice number 2270 on page 1/14 of the Yeargin audit report.

b. Structure number 2 is the water tank referred to in Paragraph 30 hereof and is associated with invoice number 32629 identified on page 4/14 of Schedule 1 to the Yeargin audit report.

c. Item 3 consists of three propane tanks, which are associated with the following pages and invoices on Schedule 1 of the Yeargin audit: page 5, invoice number 4692; page 7, invoices 4702, 4704 and 4705; page 8, invoices 4708, 4709 and 4711; page 12, invoices 4747 and 4752; and on page 14, invoice 4783.

d. Item 4 consists of four HCL tanks, which are associated with the following pages and invoices of Schedule 1 of the Yeargin audit: page 7, invoices 3014, 3041 and 3042; and page 8, invoices 3062 and 3898.

e. Item 5 consists of two ammonia tanks, which are associated with page 8/14, invoice 22245 of Schedule 1 to the Yeargin audit report.

f. Item 6 consists of four HCL and ammonia towers, which are associated with page 9/14, invoice 4718 of Schedule 1 to the Yeargin audit report.

35. Items identified by alphabetical designations A through P are steel structures associated with the Standard Industrial audit report. These structures are common in their construction materials and appearance and are referred to in Schedule 1 to the Standard Industrial Structures audit report as follows:

- a. Item "A" is the anode building and is referred to on page 1/7 of the Standard Industrial audit report.
- b. Item "B" is the cell house building and is referred to on page 1/7 of the Standard Industrial audit report.
- c. Item "C" is the crystallization/dryer train A building and is referred to on page 1-2/7 of the Standard Industrial audit report.
- d. Item "D" is the crystallization/dryer train B building and is referred to on page 2/7 of the Standard Industrial audit report.
- e. Item "E" is the chiller building and is referred to on page 2/7 of the Standard Industrial audit report.
- f. Item "F" is the boiler building and is referred to on page 3/7 of the Standard Industrial audit report.
- g. Item "G" is the batch dryer building and is referred to on page 3/7 of the Standard Industrial audit report.
- h. Item "H" is the blender B building and is referred to on page 3/7 of the Standard Industrial audit report.
- i. Item "I" is the blender A building and is referred to on pages 3-4/7 of the Standard Industrial audit report.
- j. Item "J" is the salt crystallizer building and is referred to on page 4/7 of the Standard Industrial audit report.
- k. Item "K" is the warehouse building and is referred to on page 4/7 of the Standard Industrial audit report.
- 1. Item "L" is the TCP/desiccant building and is referred to on page 5/7 of the Standard Industrial audit report.

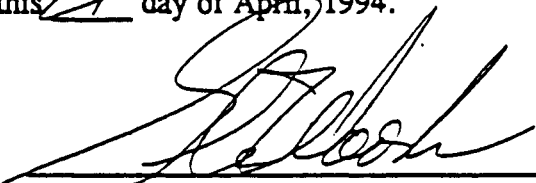
m. Item "M" is the plant monitoring building and is referred to on page 5/7 of the Standard Industrial audit report.

n. Item "N" is the samples building and is referred to on page 5/7 of the Standard Industrial audit report.

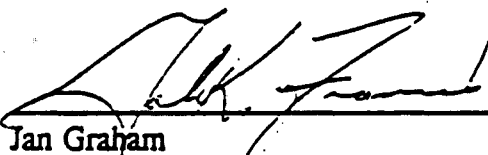
o. Item "O" is the vehicle maintenance building and is referred to on page 6/7 of the Standard Industrial audit report.

p. Item "P" is the pumphouse and is referred to on page 6/7 of the Standard Industrial audit report.

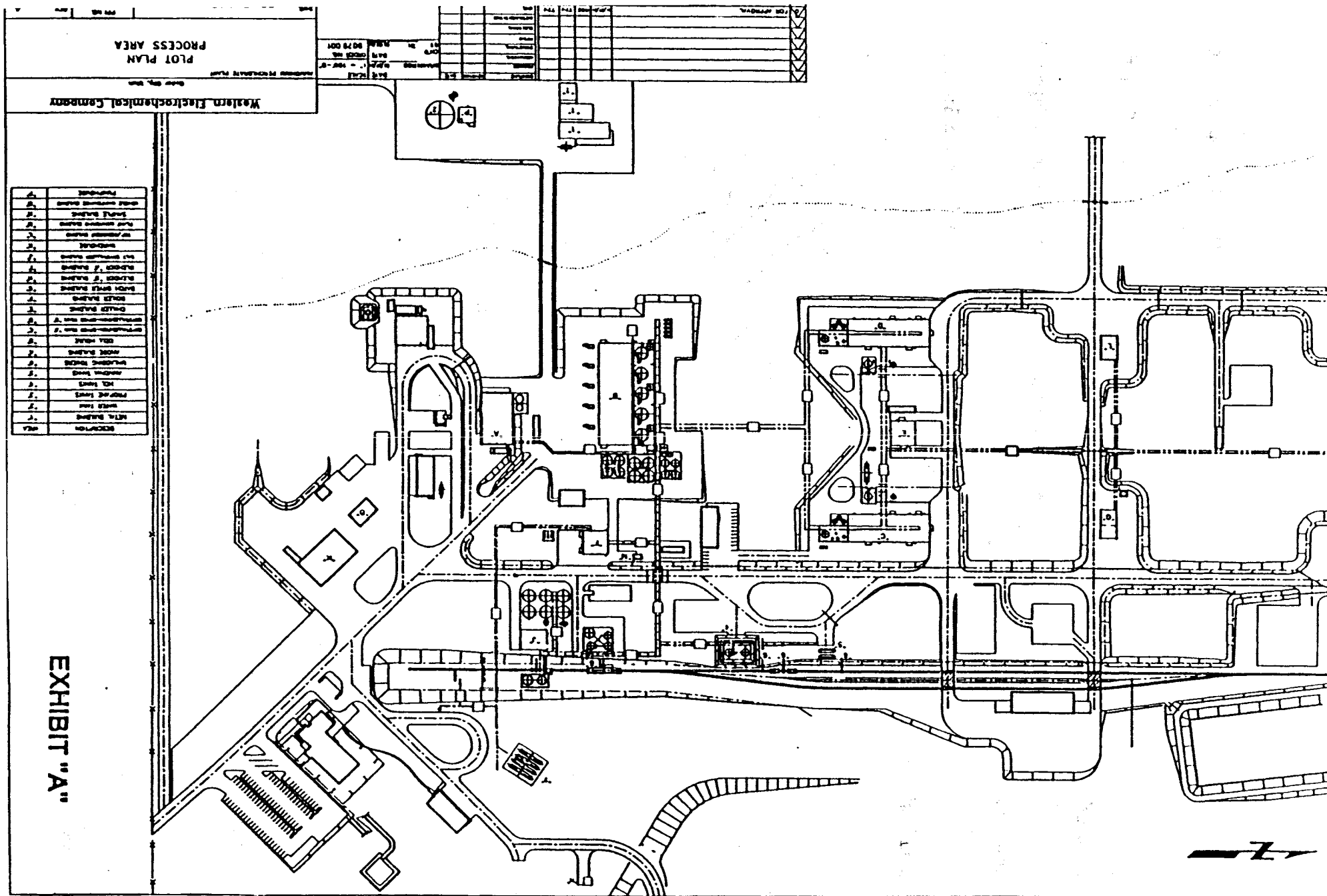
RESPECTFULLY SUBMITTED this 29th day of April, 1994.

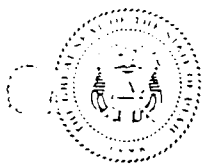


R. Glen Woods
Attorney for Petitioners



Jan Graham
Gale K. Francis
Attorneys for Respondent





Clyde R. Nichols, Jr.
Executive Director

UTAH STATE TAX COMMISSION

160 East Third South
Salt Lake City, Utah 84134
Telephone (801) 530-6300
Fax Number (801) 530-6118
September 17, 1992

EXHIBIT 1

R. H. Hansen, Chairman
Roger O. Tew, Commissioner
Joe B. Pacheco, Commissioner
S. Blaine Willes, Commissioner

YEARGIN INC
PO BOX 6508
GREENVILLE SC 29606-6508

In reply refer to:
COPY
Phone No. (801) 530-6185
Sales and Use Tax
Acct. No. H02516
Audit Period 10/88 to 12/89

STATUTORY NOTICE

Attached are the findings of the Auditing Division relative to your sales and use tax liability as determined after an examination of your records.

If you agree with the audit findings, the tax, penalty and interest as described in the attached audit report are due and payable. The interest shown is calculated through the date indicated, however, you may reduce the amount of interest charged by paying the amount due prior to that date. Please compute the interest to the date of payment using the daily interest amount shown in the audit report. Attach a copy of this notice with your remittance payable to the Utah State Tax Commission at the above address to the attention of the person identified in the heading of this notice.

If you do not agree, you may appeal pursuant to the provisions of Utah Code Ann. §§59-1-501 and 63-46b-3.

The following appeal procedures are available to you:

1. You may request a Division Conference with the Auditing Division in an effort to clarify and narrow the issues and problems involved. This conference will be conducted on an informal basis.
2. If you do not want a Division Conference or the conference does not resolve this matter, and you want to pursue your appeal rights, you must file a Petition for Redetermination within 30 days of the mailing date of this letter to protect your appeal rights under the law. A copy of this Statutory Notice must be attached to your Petition for Redetermination and both should be returned to the Utah State Tax Commission at the above address to the attention of the person identified in the heading of this notice. The Tax Commission has no authority to consider your Petition if it is not filed within this 30 day period, even though a Division Conference is requested.
3. You have the right to request a hearing before the Tax Commission to present evidence, legal authority, and argument, prior to the Tax Commission's rendering a decision on your Petition for Redetermination. The request for a hearing must be made in the Petition for Redetermination. If a hearing is not requested, the Tax Commissioners will then render a decision based upon the evidence and arguments before it.

COPY

4. Your Petition for Redetermination must be set forth as outlined in the attached form.

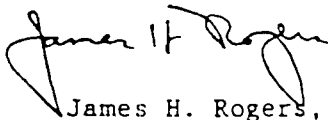
If you file a Petition for Redetermination, the Auditing Division will respond with an Answer to Petition for Redetermination to apprise you of the nature of its defenses and the facts it relies upon for affirmative relief pursuant to Utah Code Ann. §63-46b-3.

Unless you file a Petition for Redetermination as described above within the required 30 days, this Statutory Notice will constitute a final assessment and becomes due and payable. If a Petition for Redetermination is not filed or full payment is not received within 30 days, your case will be referred to the Collection Division. They will collect the unpaid tax and in addition assess you for updated interest and a failure to pay penalty of 10 percent or \$50 whichever is greater. (UC §59-1-401(2)(a)).

The Utah Taxpayer Bill of Rights is available free of charge, upon request. This publication describes your rights and obligations and the Tax Commission's procedures for appeals, refund claims, and collections. To arrange for Americans with Disabilities Act accommodations, please contact the Tax Commission at (801) 530-6920, (801) 530-6077 or TDD (801) 530-6269 allowing three working days notice.

If you have questions concerning the amounts assessed, please refer to the person identified in the heading of this notice. Your prompt response is needed in order to protect your appeal rights.

UTAH STATE TAX COMMISSION



James H. Rogers, CPA
Director, Auditing Division

3SWO/kbs/25-26

Enclosure

UTAH SALES AND USE TAX AUDIT SUMMARY
FOR THE PERIOD
10/01/88 - 12/31/89

YEARGIN INC.
P O BOX 6508
GREENVILLE SC 29606-6508

Report Date: 09/17/92
Account Number: H02516
Examining Officers:
RON JACOBSON
JEANINE HOWELLS CPA

COPY

Reference	Additional Tax	Penalty	Interest*	Total Amt. Due
Exhibit A	\$70,688.66	\$7,068.87	\$26,162.17	\$103,919.70
Payment 03/01/92	(7,629.14)	(7,068.87)	(26,162.17)	(\$40,860.18)
Balance	\$63,059.52	\$0.00	\$0.00	\$63,059.52
Interest on Balance			4,768.34	\$4,768.34
Balance due/(credit)	\$63,059.52	\$0.00	\$4,768.34	\$67,827.86

Grand Total \$67,827.86

*Note: Interest Computed To : 10/17/92
Daily Interest Amount: \$20.73

REMARKS:

SEE ATTACHED

COPY

7/17/92

SALES AND USE TAX AUDIT SUMMARY
FOR THE PERIOD
10/01/88 - 12/31/89

The following summarizes the sales and use tax audit adjustments and the tax authorities upon which the Auditing Division relies.

1. Goods Consumed-Schedule 1

a. Purchases of tangible personal property for storage, use, or other consumption are subject to tax. Schedule 1 lists tax-free purchases not reported directly to the Utah State Tax Commission. Refer to Rules R865-21-1U, R865-21-6U, and R865-19-23S(D).

b. Many items were purchased tax free that do not qualify for exemption under Rule R865-19-85S. Please refer to the referenced rule for detailed information concerning the exemption.

2. Sales Tax Credit-Schedule 2

The schedule allows credit for Utah tax paid or accrued on materials that qualify for exemption under Utah Tax Commission Rule R865-19-85S.

A 10% negligence penalty is being imposed based upon Utah Code Section 59-1-401(3)(a) due to the fact that reasonable care was not taken in purchasing materials that do not qualify for the manufacturing exemption.

To help in reading the report, Exhibit A-1 summarizes the adjustments; Exhibit A computes the additional tax, penalty, and interest. The amounts are listed by quarter and taxing jurisdiction. Interest is imposed at an annual rate of 12 percent based upon Utah Code Ann. Sec. 59-1-402.

This audit report combines and amends the report covering the period 10/1/88 - 12/31/88. Information provided by Mr. Glen Woods reduced the liability for the referenced period. The payment made 3/01/92 has been applied in this report.

EARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

SUMMARY OF SALES AND USE TAX AUDIT ADJUSTMENTS

1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)		(11)
PERIOD	LOC CODE	TAXING AUTHORITY	TAXABLE AMOUNT [FROM EXHIBIT A-1]	COMBINED TAX RATE	DEFICIENCY OR (CREDIT)	PENALTY RATE	PENALTY	INTEREST @12% PER ANNUM	FROM	TO	TOTAL AMOUNT DUE
81231	1	11-0008	IRON COUNTY	\$417,191.70	6.0000%	\$25,031.50	10.00%	\$2,503.15	01/31/89	03/01/92	\$36,792.84
90331	1	11-0008	IRON COUNTY	1,163,109.98	6.0000%	69,786.60	10.00%	6,978.66	04/30/89	03/01/92	100,534.7
90630	1	11-0008	IRON COUNTY	64,861.81	6.0000%	3,891.71	10.00%	389.17	07/31/89	03/01/92	5,488.7
90930	1	11-0008	IRON COUNTY	(590,665.68)	6.0000%	(35,439.94)	10.00%	(3,543.99)	10/31/89	03/01/92	(48,911.0)
91231	1	11-0008	IRON COUNTY	123,646.48	6.0000%	7,418.79	10.00%	741.88	01/31/90	03/01/92	10,014.3
SUBTOTALS					\$70,688.66		\$7,068.87				\$103,919.7
PAYMENT MADE ON 03/01/92					(7,629.14)		(7,068.87)				(40,860.1)
BALANCE					\$63,059.52		\$0.00				\$63,059.5
INTEREST ON BALANCE FROM 03/01/92 TO 10/17/92									03/01/92	10/17/92	4,768.34
BALANCE DUE/(CREDIT)					\$63,059.52		\$0.00				\$67,827.8

COPY

UTAH SALES AND USE TAX AUDIT

EXHIBIT A-1 1/1

Q 9/1/92
FBR 9/9/92

YEARGIN INC.
ACCOUNT NUMBER: H02516
AUDIT PERIOD: 10/01/88 - 12/31/89
SUMMARY OF AMOUNTS SUBJECT
TO SALES AND USE TAX

PERIOD ENDING	LOC CODE	TAXING AUTHORITY	SCHEDULE 1	SCHEDULE 2	TOTALS [TO EXHIBIT A]
891231	1 11-000B	IRON COUNTY	\$500,995.03	(\$83,803.33)	\$417,191.70
890331	1 11-000B	IRON COUNTY	\$1,229,644.65	(\$66,534.67)	\$1,163,109.98
890630	1 11-000B	IRON COUNTY	\$1,758,115.14	(\$1,693,253.33)	\$64,861.81
890930	1 11-000B	IRON COUNTY	\$266,116.15	(\$856,781.83)	(\$590,665.63)
891231	1 11-000B	IRON COUNTY	\$132,867.98	(\$9,221.50)	\$123,646.48
TOTALS [MEMO ONLY]			\$3,887,738.95	(\$2,709,594.66)	\$1,178,144.29

COPY



UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 1/14

YEAEGIN INC.

ACCOUNT NUMBER: H02515

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

COPY

RKJ 9/01/92

LBR 9/4/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
881025	102588	6109	CR CAD	9	XEROX LASER PLOTTER		\$39,290.80
881026	50485	6098	SOFTWARE CITY	9	COMPUTER EQUIPMENT/FIELD OFFICE		1,335.49
881029	D97296	6118	KANER CO	10	MISC TOOLS		8,353.17
881029	D97328	6113	KANER CO	10	5 KW GENERATOR		5,594.40
881031	D97286	6118	KANER CO	10	MISC TOOLS		3,270.49
881102	6766	6194	BLACK HAWK	10	SAND		880.00
881103	110388-01	6158	SECO	10	COMPUTER RENTAL		2,760.00
881104	2270	6101	ATCO STRUCTURE INC.	9	FOLD-A-WAY BUILDING(3)		132,207.00
881107	8147	1002	POLYDRAIN	2	TRENCH DRAINS AND CATCH BASINS		5,093.93
881107	50896	6098	SOFTWARE CITY	9	COMPUTER EQUIPMENT/FIELD OFFICE		198.00
881110	20100	3002	MASKELL ROBBINNS	4	4" PLASTIC PIPE FITTINGS		794.64
881110	19979	3002	MASKELL ROBBINNS	4	4" PLASTIC PIPE FITTINGS		1,566.60
881111	53931	3004	KEENAN SUPPLY	4	IRON PLUMB. FITTINGS		295.08
881111	53941	3004	KEENAN SUPPLY	4	IRON PLUMB. FITTINGS		36.95
881111	53932	3004	KEENAN SUPPLY	4	IRON PLUMB. FITTINGS		238.98
881122	4321	6902	SHAW ADVERTISING COMPANY	14	SIGNS		394.50
881123	8306	1002	POLYDRAIN	2	TRENCH DRAINS AND CATCH BASINS		1,167.73
881123	20215	3009	MAASKELL-ROBBINS	5	PIPES & FITTINGS FOR FIRE WATER SYSTEM		62,044.50
881123	20213	3006	MAASKELL-ROBBINS	5	PIPE & FITTINGS FOR SEWER SYSTEM		27,145.17
881123	32923	3010	TEMPE INDUSTRIAL SUPPLY	5	PIPES & FITTINGS FOR UNDERGROUND AIR SYS.		34,561.61
881130	20291	3009	MAASKELL-ROBBINS	5	PIPES & FITTINGS FOR FIRE WATER SYSTEM		53,300.97
881130	20289	3006	MAASKELL-ROBBINS	5	PIPE & FITTINGS FOR SEWER SYSTEM		23,772.28
881130	30545	6457	SPECIALTY GRAPHICS	12	PAYROLL CHECKS		140.70
881205	8398	1002	POLYDRAIN	2	TRENCH DRAINS AND CATCH BASINS		6,335.15
881206	32977	3010	TEMPE INDUSTRIAL SUPPLY	5	PIPES & FITTINGS FOR UNDERGROUND AIR SYS.		396.70
881207	STMT	6137	UTAH INTERNATIONAL	10	TAILINGS		28,540.00
881208	20486	3006	MAASKELL-ROBBINS	5	PIPE & FITTINGS FOR SEWER SYSTEM		1,346.50
881208	20487	3009	MAASKELL-ROBBINS	5	PIPES & FITTINGS FOR FIRE WATER SYSTEM		7,651.51
881208	12301	6124	CENTURY 23	10	BAR CODE SYSTEM		7,559.00
881208	10003	6437	ELECTRICAL WHOLESALE SUPPLY	12	LIGHT BULBS		97.62
881212	121288-1	5158	SECO	10	COMPUTER RENTAL		690.00
881212	308418	6551	REEF IND.	13	ELEC. TAPE-PHONE LINE PROTECT.		57.00
881213	20526	3009	MAASKELL-ROBBINS	5	PIPES & FITTINGS FOR FIRE WATER SYSTEM		3,465.00
881215	6584	6491	BORDER STEEL	12	STOCK REBAR		968.00
881219	8481	1002	POLYDRAIN	2	TRENCH DRAINS AND CATCH BASINS		1,380.29
881219	33124	3010	TEMPE INDUSTRIAL SUPPLY	5	PIPES & FITTINGS FOR UNDERGROUND AIR SYS.		2,267.27
881220	CK2677	6488	UP & L	12	INSTALL TEMPORARY ELECTRICAL SERVICE		13,278.00
881220	343520	6489	STEVE REGAN COMPANY	12	HYDRO TEST PUMP		767.00
881221	33174	3010	TEMPE INDUSTRIAL SUPPLY	5	PIPES & FITTINGS FOR UNDERGROUND AIR SYS.		695.10
881221	305028	3011	DOOLEY TACKAERRY	5	GASKETS(38)		58.40
881228	604974	4018	GRAYBAR ELECTRIC CO	5	LIGHTING FIXTURES ANODE BLDG		1,722.00
					ELEC. TAPE-PHONE LINE PROTECT.		199.50



AH SALES AND USE TAX AUDIT

SCHEDULE 1 2/14

COPY

ARGIN INC.

COUNT NUMBER: H02516

DIT PERIOD: 10/01/88 - 12/31/89

RCHASES SUBJECT TO TAX

ST PERIOD(S): NONE

RKJ 9/01/92

KBE 9/9/92

INVOICE	REFERENCE	ACCOUNT	TAX	TAXABLE
ATE	NUMBER	NUMBER VENDOR	CODE BOX S/U A	DESCRIPTION
			PAID	AMOUNT

TAL [TO EXHIBIT A-1]

\$500,995.03

0103	CK2334/REL	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	\$2,064.32
0103	CK2334/REL	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	23,751.12
0103	CK2334/REL	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	2,247.15
0103	CK 2377	7013 WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE	77,724.20
0105	8901150	6569 WESTERN ROCK PRODUCTS	13	PEA GRAVEL	1,957.90
0106	20764	3006 MAASKELL-ROBBINS	5	PIPE & FITTINGS FOR SEWER SYSTEM	3,452.90
0107	10789-1	6158 SECO	10	COMPUTER RENTAL	690.00
0107	10599	6337 SECO	11	RENT WORD PROCESSOR	275.00
0113	20924	3006 MAASKELL-ROBBINS	5	PIPE & FITTINGS FOR SEWER SYSTEM	189.59
0113	33350	3010 TEMPE INDUSTRIAL SUPPLY	5	PIPES & FITTINGS FOR UNDERGROUND AIR SYS.	1,613.77
0116	33984	6573 SETON	13	OSHA WARNING TAPES	532.35
0119	7340	6469 YEARGIN INC	12	SAFETY GLASSES	1,250.00
0120	21065	3009 MAASKELL-ROBBINS	5	PIPES & FITTINGS FOR FIRE WATER SYSTEM	211.44
0120	21104	3006 MAASKELL-ROBBINS	5	PIPE & FITTINGS FOR SEWER SYSTEM	429.00
0120	21029	3009 MAASKELL-ROBBINS	5	PIPES & FITTINGS FOR FIRE WATER SYSTEM	2,005.40
0120	21028	3009 MAASKELL-ROBBINS	5	PIPES & FITTINGS FOR FIRE WATER SYSTEM	1,913.72
0123	CK2514/REL	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	2,114.38
0123	CK2514/REL	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	697.62
0123	CK2514/REL	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	14,484.32
0123	CK2514/REL	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	10,933.98
0125	33485	3010 TEMPE INDUSTRIAL SUPPLY	5	PIPES & FITTINGS FOR UNDERGROUND AIR SYS.	3,848.46
0125	513286	4018 GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG	1,715.17
0130	CK 2637	7013 WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE	71,711.65
0130	CK 2633	5119 N.E.T.S.	10	TOOL RENTAL	3,545.00
0130	STMT	6137 UTAH INTERNATIONAL	10	TAILINGS	8,960.00
0131	518269	4018 GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG	956.50
0131	STMT	6137 UTAH INTERNATIONAL	10	TAILINGS	1,210.00
0201	518893	4018 GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG	1,870.00
0201	11005	4022 ELECTRICAL WHOLESALE	5	RECEPTACLES	11,331.00
0203	4002	9019 BLAINE EQ CO.	15	JD LOADER/NET OF T/IN	26,600.00
0204	20499-2	6158 SECO	10	COMPUTER RENTAL	690.00
0204	20489	6337 SECO	11	RENT WORD PROCESSOR	275.00
0206	CK2647/REL1	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	1,582.53
0206	CK2647/REL	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	325.47
0206	CK2647/REL1	1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT	1,783.10
0206	CK 2678	7013 WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE	10,181.00
0207	621131	4018 GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG	917.00
0209	8784	1002 POLYDRAIN	5	TRENCH DRAINS AND CATCH BASINS	2,957.64
0209	8784	3006 MAASKELL-ROBBINS	5	PIPES & FITTINGS FOR FIRE WATER SYSTEM	4,120.00

UTAH SALES AND USE TAX AUDIT

COPY

SCHEDULE 1 3/14

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

RKJ 9/01/92

KBR 9/5/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890216	54843	6839	SETON NAME PLATE CORP	14	SIGNS		519.75
990220	CK2756/REL1	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,301.39
990220	CK2757/REL	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		4,836.82
890220	CK2756/REL1	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		262.76
890220	CK2757/REL	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		16,650.01
890220	CK2756/REL1	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		862.11
890220	CK2756/REL	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		525.83
890220	CK2647/REL1	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,205.36
890220	CK2756/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		14,247.74
890220	CK2755/REL1	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,359.23
890220	CK2756/REL1	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,958.04
890220	CK2756/REL1	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		87.25
890220	CK2791/REL2	1001	S & S STEEL	1	ANCHOR BOLTS/VEHICLE MAINT BLDG		239.37
890220	233	1001	S & S STEEL	2	ANCHOR BOLTS FOR DRYER BLDG/REL40		1,319.17
890220	230	1001	S & S STEEL	2	CURB CHANNELS/DRYER BLDG/REL41		2,259.18
890220	227	1001	S & S STEEL	2	ANCHOR BOLT RODS FOR FOUNDATIONS/REL35		7,183.64
890220	232	1001	S & S STEEL	2	ANCHOR BOLTS FOR DRYER BLDG/REL39		369.86
890220	CK 2602	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		27,638.00
890221	S181	10011	BLACK HAWK SLAG	16	SLAG		880.00
890223	S050303	4028	DUPLEX PRODUCTS	6	INSPECTION CARDS		920.42
890223	6685	6886	BORDER STEEL	14	STOCK REBAR		2,389.00
890223	1479	10027	FARMERS DIST,	16	TRAILER RENT		400.00
890227	CK2819/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		805.46
890227	CK2819/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		723.29
890227	CK2819/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,625.11
890227	CK2819/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		93.65
890227	CK2819/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,146.67
890227	CK2819/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		413.91
890227	CK2819/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		829.16
890227	CK2819/REL	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		155.16
890227	CK2819/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,473.03
890227	CK2813/REL	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		9,782.82
890227	529465	4018	GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG		8,164.24
890227	CK 2852	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		7,322.18
890228	REL63	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		2,892.80
890228	CK2871/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		77.78
890228	CK2871/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		219.31
890228	CK2871/REL1	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,851.91
890228	CK2871/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,377.40
890228	CK2871/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		304.42
890228	CK2871/REL2	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,452.59
890228	237	1001	S & S STEEL	2	FABRICATION OF SHOP/WAREHOUSE TRUCK RAMP		961.29

TAH SALES AND USE TAX AUDIT

SCHEDULE 1 4/14

EARGIN INC.

CCOUNT NUMBER: H02516

UDIT PERIOD: 10/01/88 - 12/31/89

URCHASES SUBJECT TO TAX

EST PERIOD(S): NONE

RKJ 9/01/92

KBC 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
90300	32629	2042	ROCKY MTN FAB	4	BOILER MAKE-UP WATER TANK		17,197.00
90300	32629	7020	ROCKY MTN FAB	4	750,000 GAL WATER STORAGE TANK		153,376.00
90302	287782	5019	DREXELBROOK	7	LEVEL SENSE, FLOOR DRAIN SUMP		1,877.04
90303	REL65	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		2,211.69
90303	REL64	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		346.67
90304	8998	13690	ICM	31	GROVE CRANE #71653		60,644.98
90305	REL62	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		7,491.57
90306	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		528.03
90306	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,622.43
90306	CK2899/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		17.15
90306	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		8,857.27
90306	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		506.53
90306	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		470.34
90306	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		679.84
90306	628065	4029	GRAYBAR ELECTRIC	6	YARD LIGHTS		853.00
90306	CK 2956	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		28,856.25
90306	CK 2957	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		10,603.00
90306	CK 2952	6119	N.E.T.S.	10	TOOL RENTAL	497.77	9,132.26
90306	20889	6738	CURTIS STEEL	13	COATED REBAR		257.00
90306	8903331	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		1,823.00
90307	11638	4022	ELECTRICAL WHOLESALE	6	RECEPTACLES		1,102.50
90307	8903322	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,543.10
90308	248	1001	S & S STEEL	2	ANCHOR BOLT RODS/DRILLED PIERS/REL50		2,370.73
90308	249	1001	S & S STEEL	2	ANCHOR BOLT ROD/PUMPHOUSE/REL49		421.00
90309	634452	4018	GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG		2,821.50
90309	8903323	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,780.00
90310	CK2960/REL3	1001	S & S STEEL	1	WELD PLATES/SHOP, WAREHOUSE BLDG		903.45
90310	8944	1002	POLYDRAIN	2	TRENCH DRAINS AND CATCH BASINS		2,957.64
90310	628070	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		870.53
90310	8903324	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		1,839.00
90311	30789-5	6158	SECO	10	COMPUTER RENTAL		690.00
90311	30189	6337	SECO	11	RENT WORD PROCESSOR		275.00
90313	CK2978/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		76.95
90313	CK2978/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,238.40
90313	CK2978/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		112.61
90313	CK2978/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,853.15
90313	CK2978/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,785.09
90313	8903488	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,013.00
90313	30858	10000	SPECIALITY GRAPHICS	16	VOUCHER CHECKS		95.50
90314	REL69	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		122.03
90314	256	1001	S & S STEEL	2	ANCHOR BOLT ROD/DRILLED PIERS/REL54		382.50
90314	254	1001	S & S STEEL	2	ANCHOR BOLT RODS, PUMP HOUSE/REL52		2,872.78
90314	254	1001	S & S STEEL	2	EMERGENCY LIGHTING FIXTURES		14,005.60



UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 5/14

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

RKJ 9/01/92

102 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890314	8903489	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,409.50
890315	8903490	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,961.50
890316	533213	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		4,834.00
890316	8903491	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,862.00
890317	8903492	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		3,310.50
890320	CK3067/REL5	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,625.87
890320	CK3067/REL5	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		90.44
890320	CK3067/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		351.88
890320	CK3067/REL5	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,944.55
890320	CK3067/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		620.83
890320	CK3067/REL5	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		531.46
890320	CK3067/REL5	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		38.50
890320	20865675	4037	RYALL ELECTRIC SUPPLY	6	EMERGENCY LIGHTING FIXTURES		10,945.00
890320	CK 3118	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		28,005.25
890320	CK 3119	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		15,979.26
890320	32089	6888	SECO	14	COMPUTER RENTAL/FOR SCHEDULING DEPT		1,500.00
890320	8903654	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,703.50
890321	639820	4018	GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG		364.50
890321	639740	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		21,365.65
890321	639943	4018	GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG		2,551.95
890321	639726	4018	GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG		2,508.55
890321	8903655	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		3,232.00
890322	267	1001	S & S STEEL	2	ANCHOR BOLT ROD/DRILLED PIERS/REL55		3,140.28
890322	265	1001	S & S STEEL	2	ANCHOR BOLT RODS/AMMONIA & HCL STORAGE AR		1,238.98
890322	8903656	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		4,696.00
890323	4692	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		15,850.00
890323	8903657	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		3,742.50
890324	8903658	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,131.47
890324	8903811	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		3,857.00
890327	CK3142/REL5	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,970.00
890327	CK3142/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		563.96
890327	CK3142/REL5	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		265.27
890327	CK3142/REL5	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,480.01
890327	CK 3678	2029	MT VIEW SCALE	3	SPARE BAT./CHARGER		1,100.00
890329	643499	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		19,222.07
890329	636602	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		3,174.74
890329	636634	4029	GRAYBAR ELECTRIC	6	YARD LIGHTS		311.98
890330	644338	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		14,907.00
890331	644776	4029	GRAYBAR ELECTRIC	6	YARD LIGHTS		13,560.45
890331	8903812	12805	WESTERN ROCK PRODUCTS	26	CONCRETE SAND		573.85
890330			WESTERN ROCK PRODUCTS		ALLOW 5% OF CONCRETE AS EXEMPT		(\$14,658.65)

JTAH SALES AND USE TAX AUDIT

SCHEDULE 1 6/14

TEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

RKJ 9/01/92

DRE 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
TOTAL [TO EXHIBIT A-1]							\$1,229,644.65

90403	CK3205		1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		\$12,942.73
90403	CK 3261		7013 WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		26,481.01
90403	CK 3260		7013 WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		33,946.40
90403	170448		9041 U P & L	15	INSTALL SCADA RTU		20,000.00
90404	645933		4034 GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		12,194.00
90405	645361		4034 GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		8,553.58
90405	232		5027 JMC INSTRUMENTS	7	LEVEL INDIC., HCL TANKS		5,284.00
90406	238		5027 JMC INSTRUMENTS	7	LEVEL INDIC., HCL TANKS		2,442.00
90407	40789-12		6158 SECO	10	COMPUTER RENTAL		690.00
90407	40789		6337 SECO	11	RENT WORD PROCESSOR		275.00
90410	284		1001 S & S STEEL	2	A B RODS,HOLD DOWN INSERTS/BLENDER BLDG		1,950.30
90410	276		1001 S & S STEEL	2	ANCHOR BOLT RODS/BOILER BLDG/REL64		477.20
90410	282		1001 S & S STEEL	2	ANCHOR BOLT RODS/TANK FOUNDATIONS		208.04
90410	281		1001 S & S STEEL	2	TRENCH ANGLE FRAME ASSY/UNLOADING AREA		599.05
90410	283		1001 S & S STEEL	2	ANCHOR BOLT RODS/BOILER BLDG		230.17
90410	285		1001 S & S STEEL	2	A B RODS,HOLD DOWN INSERTS/BLENDER BLDG		1,950.30
90410	288		1001 S & S STEEL	2	ANCHOR BOLTS/FOREMAN OFFICE		190.08
90410	275		1001 S & S STEEL	2	ANCHOR BOLT RODS,SLEEVES/DRYER BLDG/REL63		116,959.00
90410	648385		4029 GRAYBAR ELECTRIC	6	YARD LIGHTS		2,660.00
90410	CK 3314		7013 WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		43,459.01
90410	8904381		10570 WESTERN ROCK PRODUCTS	19	CONC. SAND		203.29
90410	DPE63524		10575 RELIANCE ELEC	19	REPLACEMENT- FAN COVER		101.32
90411	3795		2031 CONTROL & METERING LTD.	3	BULK BAG DISCHARGER		31,498.00
90411	41189		2085 DESIS FIRE EQ	4	81 GMC PUMPER #T17DEAV589842		47,000.00
90411	648913		4034 GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		5,292.00
90411	8904382		10570 WESTERN ROCK PRODUCTS	19	CONC. SAND		211.09
90412	9183		1002 POLYDRAIN	2	TRENCH DRAINS AND CATCH BASINS		1,745.32
90413	648260		4034 GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		5,575.51
90417	CK3346/REL5		1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		8,850.81
90417	CK3346/REL5		1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,190.42
90417	CK3346/REL5		1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,377.30
90417	CK3345/REL6		1000 CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		286.85
90417	244246		4035 VEGAS ELECTRIC SUPPLY CO	5	EMERGENCY LIGHTING FIXTURES		9,544.55
90417	CK 3393		7013 WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		19,215.25
90417	CK 3394		7013 WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		33,468.25
90417	0		10027 FARMERS DIST.	16	TRAILER RENT		500.00
90418	NONE		2092 ROCKY MTN AMBULANCE	4	79 FORD #S36AHEG0907		8,000.00
90418	12615		4022 ELECTRICAL WHOLESALE	5	RECEPTACLES		4,394.00
90418	630124		4029 GRAYBAR ELECTRIC	6	YARD LIGHTS		1,100.00

UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 7/14

YEARGIN INC.

RXJ 9/01/92

ACCOUNT NUMBER: H02516

KBL 9/9/92

AUDIT PERIOD: 10/01/89 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890419	294	1001	S & S STEEL	2	ANCHOR BOLT RODS, HANDRAIL WELD PLATES		2,538.62
890419	293	1001	S & S STEEL	2	PIPE SLEEVE, ANCHBOLTS/VEHICLE MAINT BLDG		13,710.41
890419	31989	8988	SECO	14	COMPUTER RENTAL/FOR SCHEDULING DEPT		1,500.00
890420	300	1001	S & S STEEL	2	ANCHOR BOLT ROD/BLENDER BLDG		359.07
890424	3014	2039	DELTA	4	HCL STORAGE TANK-TAG 03.02		32,220.00
890424	654542	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		1,419.58
890424	66798	10715	BORDER STEEL	20	REBAR		922.00
890426	4//4179W-A	2060	BETZ	4	POTALE WATER CLORINATION		3,125.00
890426	651673	4029	GRAYBAR ELECTRIC	6	YARD LIGHTS		690.94
890426	2455	10736	CENTURY 23	20	COMP. EQUIPMENT/BACKUP FOR TIME KEEPING S		922.00
890427	8442	2065	ACTION AIR	4	ROOM AIR CONDITIONERS		5,091.76
890427	656552	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		303.62
890428	13502	2084	NATONWIDE BOILER	4	BOILER ADDITIVES		1,544.00
890428	60	2072	WEST FAB	4	STORAGE RACKS		18,040.49
890428	4704	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		10,000.00
890428	4702	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		20,000.00
890429	CK3544/REL6	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,291.13
890429	CK3544/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		894.09
890429	CK3544/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		287.48
890429	CK3545/REL8	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,623.23
890429	CK3545/REL8	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,146.02
890429	CK3545/REL8	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		474.59
890429	CK3544/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,679.95
890429	CK3544/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		3,092.76
890429	CK3544/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		3,642.48
890429	CK3544/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		10,873.48
890429	CK3544/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,679.95
890429	CK3545/REL8	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,218.43
890429	CK3545/REL8	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,290.58
890429	CK3593	10377	WESTERN ROCK PRODUCTS	18	MORTAR SAND		1,110.17
890430	3042	2039	DELTA	4	HCL STORAGE TANK-TAG 05.06A		29,935.00
890430	3042	2039	DELTA	4	HCL STORAGE TANK-TAG 05.44B		29,245.00
890430	3041	2039	DELTA	4	HCL STORAGE TANK-TAG 05.44A		29,245.00
890501	245429	4035	VEGAS ELECTRIC SUPPLY CO	6	EMERGENCY LIGHTING FIXTURES		4,588.05
890502	4705	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		34,000.00
890504	659527	4018	GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLDG		(194.60)
890504	71751	5039	MERIAM INSTRUMENTS	7	PRESSURE IND., HCL TANKS		12,600.00
890505	313	1001	S & S STEEL	2	ANCHOR BOLT RODS/DOCK PLATFORM		360.36
890505	312	1001	S & S STEEL	2	ANCHOR BOLT RODS/BLENDER BLDG		196.51
890505	660311	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		1,065.79
890508	CK3521/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		264.81
890508	CK3521/REL9	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,170.40



UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 8/14

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

RKJ 9/01/92

KRL 9/4/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
390508	CK3620/REL9	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,347.81
390508	CK3773/REL7	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		972.80
390508	CK3621/REL9	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		213.12
390508	CK3620/REL9	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,330.45
390508	CK3773/REL9	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		525.77
390508	CK3620/REL8	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,972.32
390508	CK3620/REL9	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,330.45
390508	CK3620/REL8	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		702.33
390508	CK3773/REL6	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		3,635.85
390508	CK3773/REL8	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		3,937.80
390508	CK3620/REL9	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,032.03
390508	CK 3867	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		37,376.00
390508	CK 3731	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		33,429.88
390510	66836	12042	BORDER STEEL	22	REBAR FOR FOUNDATION		1,174.00
390511	46003	10940	PROTOCOL	21	RADIO RENTALS		3,375.00
390512	4708	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		15,675.00
390512	662736	4029	GRAYBAR ELECTRIC	5	YARD LIGHTS		450.00
390512	MC-18922	4036	MATERIAL CONTROL INC.	5	EMERGENCY LIGHTING FIXTURES		3,223.20
390512	22245	7023	MEEDER EQ	15	INSPECT/REPAIR RELOCATE AMMONIA STOR. FAC		66,337.00
390512	31235	12287	SPECIALTY GRAPHICS	24	PAYROLL CHECKS		239.78
390515	905055	12000	ACOM RENTALS	22	RADIO RENTALS		1,080.00
390515	3052	2039	DELTA	4	HCL STORAGE TANK-TAG 05.06B		28,935.00
390515	4709	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		75,500.00
390517	REL116	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 5		209.10
390518	325	1001	S & S STEEL	2	ANCHOR BOLT RODS/DRILLED PIERS		145.52
390518	323	1001	S & S STEEL	2	HANDRAIL WELD PLATES		636.27
390518	666092	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		13,754.30
390519	G0461002	2093	LONG AND ASSOC	4	STEAM UNIT HEATERS		20,600.00
390519	4711	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		295.00
390519	51899	10848	CBA COMPANY	20	GRILL,DAMPERS,DIFFUSERS THRU-OUT PLANT		1,553.00
390521	50789-15	6158	SECO	10	COMPUTER RENTAL		590.00
390521	50189	6337	SECO	11	RENT WORD PROCESSOR		275.00
390521	52139	6888	SECO	14	COMPUTER RENTAL/FOR SCHEDULING DEPT		1,500.00
390522	CK3916/RE10	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		161.95
390522	CK3916/RE11	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		71.50
390522	CK3916/RE10	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		231.02
390522	CK3916/RE10	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		5,259.81
390522	667267	4034	GRAYBAR ELECTRIC	5	LIGHTING FIXTURES		181.23
390522	667238	4018	GRAYBAR ELECTRIC CO	5	LIGHTING FIXTURES ANODE BLDG		2,821.50
390522	CK 4043	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		64,379.63
390522	CK 4044	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		38,937.38
390522	CK 4036	6119	N.E.T.S.	10	TOOL RENTAL		5,627.65
390522	3150	12042	BORDER STEEL	22	REBAR FOR FOUNDATION		72.00

UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 9/14

YEARJIN INC.

RJ 9/01/92

ACCOUNT NUMBER: H02516

1082 9/4/92

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE	BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890525	13004	9045	WCCO/VSOE COMPUTERS	15		INVENTORY BAR CODE SYS		107,284.30
890525	57230	9036	WT BILLARD INC	15		REBUILD TRACKMOBILE		62,557.00
890526	60461001	2093	LONG AND ASSOC	4		STEAM UNIT HEATERS		23,480.00
890526	637035	4034	GRAYBAR ELECTRIC	6		LIGHTING FIXTURES		329.28
890526	665413	4034	GRAYBAR ELECTRIC	6		LIGHTING FIXTURES		973.20
890530	CK4097/RE11	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		21,118.00
890530	CK4097/RE10	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		11,924.00
890530	CK4097/RE11	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		169,551.00
890530	670711	4034	GRAYBAR ELECTRIC	6		LIGHTING FIXTURES		1,184.00
890530	CK 4207	7013	WESTERN ROCK PRODUCTS	8		READY MIX CONCRETE		27,700.00
890531	076652	9042	U P & L	15		EQ FOR M/W LINK, CC TO SLC		10,500.00
890600	06708-8	1014	PAFCO	3		STEEL-REL #41,42,47	NOTE 5	49,930.00
890600	06708-8	1014	PAFCO	3		STEEL-TOTAL PO VALUE 499,937.00		0.00
890601	4718	2087	INTERNATIONAL GAS SYSTEMS	4		HCL RAIL UNLOAD TOWERS		98,300.00
890601	671589	4034	GRAYBAR ELECTRIC	6		LIGHTING FIXTURES		(3,545.00)
890601	DM461	12000	ACOM RENTALS	22		RADIO RENTALS		(77.00)
890601	8906258	12477	WESTERN ROCK PRODUCTS	24		GRAVEL		10,752.00
890605	7040689	12093	APPLIED CONTROL EQUIPMENT	22		REPLACEMENT PARTS(THERMOWELLS)		2,105.37
890606	7719	2094	GEO. YARDLEY CO	4		HEATERS, VEH MAINT BLDG		4,669.00
890606	60689	6337	SECO	11		RENT WORD PROCESSOR		275.00
890607	60783-14	6158	SECO	10		COMPUTER RENTAL		690.00
890607	92529	12542	NEVADA BOLT INC.	25		NUTS,BOLTS/FOR RESTOCK		1,557.40
890608	674906	4034	GRAYBAR ELECTRIC	6		LIGHTING FIXTURES		607.60
890609	60461003	2093	LONG AND ASSOC	4		GAS FIRED HEATERS		1,690.00
890609	675826	4034	GRAYBAR ELECTRIC	6		LIGHTING FIXTURES		3,975.00
890612	CK4355/REL9	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		14,378.56
890612	CK4355/RE10	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		208.75
890612	CK4354/REL8	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		6,189.84
890612	CK4354/REL7	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		3,436.63
890612	CK4355/REL9	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		130.45
890612	CK4354/REL7	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		891.25
890612	CK4355/RE10	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		16,380.52
890612	CK4355/RE10	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		424.46
890612	CK4355/RE10	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		2,498.01
890612	CK4354/RELA	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		240.10
890612	CK4355/RE10	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		240.51
890612	CK4355/RE11	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		207.62
890612	CK4355/RE10	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		4,220.21
890612	CK4354/REL6	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		6,709.06
890612	CK4354/REL6	1000	CURTIS STEEL CO	1		REBAR/CONCRETE REINFORCEMENT		923.40
890612	C10039	2097	ATLANTIC TRACK	4		RAIL CAR WHEEL CHOCKS		5,086.00
890612	CK 4454	7013	WESTERN ROCK PRODUCTS	8		READY MIX CONCRETE		29,701.38
890612	CK 4453	7013	WESTERN ROCK PRODUCTS	8		READY MIX CONCRETE		1,727.00

TAX SALES AND USE TAX AUDIT

SCHEDULE 1 10/14

EARGIN INC.

CCOUNT NUMBER: H02516

JOIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

EST PERIOD(S): NONE

RKJ 9/01/92

KBC 9/15/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
0612	61289	12520	CURTIS STEEL CO	25	PATCH COMPOUND		350.00
0612	1713	12525	STANDARD IND STRUCTURES	25	CLOSURE STRIPS FOR PENETRATIONS		697.00
0613	320294	12427	DOOLEY TACKABERRY	24	FIRE PROTECTION EQUIPMENT		74.00
0614	677139	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		3,829.50
0615	906071	12000	ACOM RENTALS	22	RADIO RENTALS		1,080.00
0619	679005	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		4,488.58
0619	13191	12382	PIPELINE INSPECTION CO	24	RENTAL, HOLIDAY DETECTOR		420.00
0620	CK4505/RE11	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		699.08
0620	CK4505/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		329.00
0620	CK 4529	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		9,555.88
0621	679040	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		115.72
0621	62089	6888	SECO	14	COMPUTER RENTAL/FOR SCHEDULING DEPT		1,500.00
0621	8656	9051	WECCO/INDUSTRIAL SALES	15	LAUNDRY EQ	NOTE 1	13,130.00
0621	24980	10484	GLENN'S SCAFFOLDING	18	LEASE SCAFFOLDING EQUIP		851.20
0621	46127	10940	PROTOCOL	21	RADIO RENTALS		3,375.00
0621	46126	10940	PROTOCOL	21	RADIO RENTALS		300.00
0621	62189	12653	CURTIS STEEL	25	REBAR FOR HCK STORAGE TANK FOUNDATION		2,013.57
0622	23339	12886	J & J BUILDING	27	JT. COMPOUND/S PAPER		270.87
0626	CK4582	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		459.10
0626	1329	2081	COMFORT ZONE SYSTEMS	4	AIR HANDLING UNIT		3,975.00
0626	684432	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		2,433.22
0626	682359	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		2,026.05
0626	CK 4790	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		9,952.50
0626	0	10027	FARMERS DIST,	16	TRAILER RENT		400.00
0626	1769	10668	COMFORT ZONE SYS	19	EXHAUST FAN/WELDER AREA		4,075.00
0627	683107	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		930.22
0627	8043	12790	BLACK HAWK SLAG	26	SANDBLAST SAND		1,424.00
0629	684771	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		1,098.00
0629	684761	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		2,249.10
0630	24973	10484	GLENN'S SCAFFOLDING	18	LEASE SCAFFOLDING EQUIP		851.20
0630	106035	12553	VAN LONDON COMPANY	25	REPLACEMENT ELECTRODE		420.00
0630			WESTERN ROCK PRODUCTS		ALLOW 5% FOR EXEMPT CONCRETE		(20,584.51)

TAL [TO EXHIBIT A-1]

\$1,758,115.14

0700	CK 5318	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		\$424.00
0700	CK 5317	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		3,197.75
0700	CK 5515	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		825.00
0700	CK 5316	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		13,828.50
0700	CK 5344	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		2,576.00
0700	CK 5009	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		2,000.00
0705	685951	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		882.00



UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 11/14

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

RKJ 9/01/92

KBR 9/19/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890705	60289	6337	SECO	11	RENT WORD PROCESSOR		275.00
890705	20924415	13081	RYALL ELEC	28	ANCHOR BOLTS-PARK LOT		224.00
890705	335909	13058	MCMASTER CARR	28	DOOR PULLS		155.70
890705	17516	13061	JAKES WIRE ROPE SVC	28	NYLON SLINGS		518.86
890711	688387	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		(201.67)
890711	688391	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		(3,080.45)
890711	1919	10668	COMFORT ZONE SYS	19	DAMPER		150.00
890713	689703	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		166.00
890715	907073	12000	ACOM RENTALS	22	RADIO RENTALS		1,080.00
890717	CK 5115	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		2,728.50
890717	12167	13087	PANELS INC	28	SM FLASHINGS/PENTRATIONS		1,048.00
890719	71889	6337	SECO	11	RENT WORD PROCESSOR		64.17
890721	72189	6888	SECO	14	COMPUTER RENTAL/FOR SCHEDULING DEPT		1,500.00
890721	007041632	13242	CONTROL EQ	29	REPLACEMENT PARTS-PRESS. GA.		395.87
890724	693590	4029	GRAYBAR ELECTRIC	6	YARD LIGHTS		1,975.00
890725	694410	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		1,075.03
890725	STMT	6137	UTAH INTERNATIONAL	10	TAILINGS		13,740.00
890725	2001302	9046	WECCO/MAC TECH	15	PUMP-SPARE PARTS		4,549.30
890727	46226	10940	PROTOCOL	21	RADIO RENTALS		3,375.00
890727	46227	10940	PROTOCOL	21	RADIO RENTALS		300.00
890727	M89567	13307	THERMETRICS	29	REPLACEMENT ELEMENT		848.53
890728	10127	9050	WECCO/CRISP AUTOMATION	15	SPARE PARTS		16,810.00
890728	14730	13143	COLO WIRE & CABLE	28	CABLE-UNDER GROUND LIGHTING		3,736.70
890728	706565	13327	MCMASTER CARR	29	LATCH, BUILDING		387.36
890729	0M727	12000	ACOM RENTALS	22	RADIO RENTALS		(10.00)
890731	CK5411/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,170.40
890731	CK5411/RE11	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		61.36
890731	696993	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		1,098.00
890731	25136	10484	GLENN'S SCAFFOLDING	18	LEASE SCAFFOLDING EQUIP		851.20
890731	54	12026	INSULATION DISTRIBUTORS	22	PIN WELDER RENTAL		1,200.00
890731	700013731	13334	UNISEAL	29	TEFLON SHEETS, BUILDINGS		1,668.12
890731	A22699	13230	RYAN HERCO	29	FLOAT VALVE-HCL STORAGE TANK		302.08
890731	107153	13238	VAN LONDON CO.	29	REPLACEMENT X-MITTER		1,300.00
890731	6708	13233	RUST AUTOMATION	29	REPLACEMENT HANDLES-B TRAIN		290.88
890731	13229	13229	DEES SPIRAL	29	PIPE- BOILER BLDG EXHAUST		356.70
890800	CK 5869	7013	WESTERN ROCK PRODUCTS	8	DEMOb. BATCH PLANT		12,000.00
890800	CK 5746	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		1,333.75
890801	19521	13283	MATERIAL CONTROL	29	EMERGENCY LIGHT		1,738.00
890802	DM854	12000	ACOM RENTALS	22	RADIO RENTALS		(390.00)
890802	7637	13151	YEARGIN CONST	28	SAFETY GLASSES		550.00
890802	83944	13162	INTERSTATE SAFETY	28	EMERGENCY WASH/SHOWER		608.00
890804	79955	13372	WETTER MACH	29	REPLACEMENT FOR BROKEN BUCKETS		752.50
890804	700100	1000	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		206.06

UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 12/14

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

RKJ 9/01/92

KBR 9/5/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890814	12222	6732	CENTURY 23	13	BAR CODES, TIME SYS.		120.00
890816	4747	2052	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		9,642.00
890820	72089	6888	SECO	14	COMPUTER RENTAL/FOR SCHEDULING DEPT		1,500.00
890821	222890	13514	BEST MFG	30	BUILDING SIGNS		9,587.70
890822	1218	13427	DYNAMET	30	REPLACEMENT CONVEYOR ROLLERS		274.24
890822	10538	13504	ANDERSON SERVICE	30	CAR ENGINE REPAIRS		372.83
890823	8736	2094	GEO, YARDLEY CO	4	THERMOSTATES-WALL		199.00
890823	9507	9051	WECCO/INDUSTRIAL SALES	15	LAUNDRY EQ	NOTE 1	5,254.00
890824	708163	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		(325.13)
890824	708179	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		(267.18)
890824	708159	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		222.61
890824	9895	13532	BENNETTS IMPERIAL GLASS	30	PAINT SUPPLIES/TAX REFUNDED		142.80
890825	708715	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		(1,098.00)
890825	709012	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		(336.00)
890828	CK 5962	6119	N.E.T.S.	10	TOOL RENTAL		110,893.41
890829	4752	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		4,461.00
890829	6574	10027	FARMERS DIST,	16	TRAILER RENT		965.00
890831	25385	10484	GLENN'S SCAFFOLDING	18	LEASE SCAFFOLDING EQUIP		851.20
890831	59	12026	INSULATION DISTRIBUTORS	22	PIN WELDER RENTAL		340.00
890904	CK 6063	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		55.00
890908	A27115	13576	RYAN HERCO	31	PUMP-REPLACE BROKEN PUMP		548.80
890908	392117	13622	METRA STEEL	31	GALV. FLASHING		172.00
890908	4559	13621	C & H RENTALS	31	RENT COMPACTOR		1,125.31
890911	91189	6888	SECO	14	COMPUTER RENTAL/FOR SCHEDULING DEPT		1,233.00
890911	6429	10027	FARMERS DIST,	16	TRL RENT-9/17-9/17/89		200.00
890911	66724	13637	BRADSHAW AUTO PARTS	31	FILTERS, VEH. MAINT.	2.85	385.66
890911	898918	13510	PIPE VALVE FITTING	31	HANDLES-REPLACEMENTS		150.00
890912	0	13597	ICM		ALLOW 50% FOR PURCHASE		(1,554.00)
890912	910038	13553	MT STATES FENCE CO	30	MATERIALS FOR FENCE		2,470.92
890912	76307	13597	ICM	31	PLATFORM RENT	DEDUCTED	2,232.00
890912	4576	13631	C & H RENTALS	31	TOOL RENT		110.00
890914	66963	13648	BRADSHAW AUTO PARTS	31	VEH. PARTS		135.16
890914	76385	13623	ICM	31	RENT LIFT	DEDUCTED	421.75
890914	76384	13623	ICM	31	RENT LIFT	DEDUCTED	455.00
890918	22962	13649	FOR SHOR CO	31	CONCRETE FORMS	DEDUCTED	2,721.00
890919	46384	10940	PROTOCOL	21	RADIO RENTALS		3,375.00
890919	46385	10940	PROTOCOL	21	RADIO RENTALS		300.00
890919	120543	12836	CARRIER INTERMOUNTAIN	25	A/C UNIT		458.37
890920	G10578	13529	DURA CRETE	31	CONC GATE VALVE BOX		116.10
890921	678	10027	FARMERS DIST,	16	TRL RENT-9/17-9/20/89		190.00
890921	181925	13662	THERMIRON	31	THERMOSTAT-PUMP HOUSE		222.00
890921	6793	13591	FARMERS DIST	31	TRL RENT, TIRE		190.00
890922	0	0	ICM		ALLOW 50% FOR PURCHASE		(191.00)

UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 13/14

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

RKJ 9/01/92

1002 9/19/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890923	67691	13674	BRADSHAW AUTO PARTS	31	AUTO PARTS		108.81
890925	6228	10605	ADVANCE MACH.	19	RENT SM BRAKE		1,750.00
890925	6227	10725	ADVANCED MACHINERY & TOOL	20	5 MONTHS RENTAL/MACHINE SLITTER		875.00
890926	67872	13674	BRADSHAW AUTO PARTS	31	AUTO PARTS		59.77
890927	25558	10484	GLENN'S SCAFFOLDING	18	LEASE SCAFFOLDING EQUIP		851.20
890928	5909606	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		27.50
890928	63016	13582	BRADSHAW AUTO PARTS	31	AUTO PARTS		68.77
890928	5279	13579	CEDAR RAD.	31	REPAIR RAD-CRANE		99.00
890928	909093	13556	ACOM	31	REPLACE LOST RADIOS		2,763.00
890928	890918	13560	SIMPLEX	31	BATT. REPLACEMENT FIRE PROTECT	DEDUCTED	495.40
890929	58106	13632	BRADSHAW AUTO PARTS	31	AUTO PARTS		78.25
890929	8814	13671	GREGORY PUMP CO	31	CONDENSATE PUMP-REPLACEMENT		1,002.00
890930			WESTERN ROCK PRODUCTS		ALLOW 5% FOR EXEMPT CONCRETE		(1,949.80)

SUSTOTAL

\$2.85 \$266,163.65

CREDIT FOR TAXES PAID (TAX COLUMN DIVIDED BY 0.0600)

(47.50)

TOTAL (TO EXHIBIT A-1)

\$266,116.15

891000	52928	13511	INTERMTN CONCRETE	31	SEALANT	DEDUCTED	\$1,128.00
891002	CK 6398	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		3,134.00
891003	3951	13542	FINAL DETAIL	31	CLEAN VEHICLE		140.00
891005	62	13594	INSUL DIST.	31	REPAIR SS WELDER		433.04
891009	171173	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		639.00
891009	CK6440	10418	PAFCO	18	PAINT RACK		2,043.77
891010	1008	13699	ADVANCE MACH	31	REPAIR SM SHEAR		1,097.49
891013	45512	10940	PROTOCOL	21	RADIO RENTALS		215.00
891013	45511	10940	PROTOCOL	21	RADIO RENTALS		1,457.50
891013	45510	13702	PROTOCOL	31	CHARGE FOR LOST RADIOS		529.00
891016	5125611	13700	LYNN HANSEN SCAFF.	31	MISSING PARTS	NOTE 4 DEDUCTED	340.75
891026	25760	10484	GLENN'S SCAFFOLDING	18	LEASE SCAFFOLDING EQUIP		418.53
891026	1923	13155	SIS	28	EXTRA MATERIAL-BLDGS.		3,335.00
891026	1922	13045	SIS	28	ADDL BLDG PARTS		21,062.60
891026	1924	13554	SIS CORP	31	EXTRA PARTS-BLDGS.		300.00
891026	25765	13706	GLENNS SCAFF.	31	SHORTAGES		473.00
891027	77473	13701	ICM	31	DAMAGE FORK LIFT		1,137.25
891030	CK 6597	6119	N.E.T.S.	10	TOOL RENTAL		29,195.33
891106	CK 6621	6119	N.E.T.S.	10	TOOL RENTAL		23,213.14
891106	77648	13704	ICM	31	DAMAGE FORK LIFT		1,259.50
891107	4783	2062	INTERNATIONAL GAS SYS	4	PROPANE STORAGE SYSTEM		4,875.00
891115	STMT	6137	UPAH INTERNATIONAL	10	TOOL RENTAL		3,551.00
891116	CK 6663	6119	N.E.T.S.	10	TOOL RENTAL		10,708.05

UTAH SALES AND USE TAX AUDIT

SCHEDULE 1 14/14

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/89

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

RKJ 9/01/92

KRR 9/4/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
891116	CK 6668	13709	UNITED ENG	31	TOOLS DAMAGED		14,480.57
891215	CK 6679	6119	N.E.T.S.	10	TOOL RENTAL		160.00
891228	22273	11036	WELD-ON	21	PLASTIC ADHESIVE		179.52
891200	CK 8699	6119	N.E.T.S.	10	TOOL RENTAL		2,463.16
891230			WESTERN ROCK PRODUCTS		ALLOW 5% FOR EXEMPT CONCRETE		(352.92)
TOTAL [TO EXHIBIT A-1]							\$132,867.98

- NOTE: 1. ACCOUNT DISTRIBUTION STAMP SHOWS ACCURAL OF \$791.40, AUDITORS COULD NOT TRACE ACCURAL TO A REMITTANCE. SEE G/L ACCOUNT 7-117-000-00.
2. TOTAL CONCRETE PURCHASED HAS BEEN REDUCED BY 5% AS BEING RELATED TO MANUFACTURING EQUIPMENT.
3. NOT USED
4. VENDOR COLLECTED WRONG STATE TAX, SHIPPED TO UTAH. TAX CREDIT DISALLOWED.
5. STEEL USED FOR SHOP/WAREHOUSE, HCL STORAGE, UNLOADING AREA, ESTIMATED AMOUNT TO BE 10% OF AMOUNT PURCHASED. LISTED AREAS DO NOT QUALIFY FOR THE MANUFACTURING EXEMPTION.
6. TAGGED ELECT. UNDERGROUND DUCT BULK MATERIAL.

SOURCE: NUMERICAL PURCHASE ORDER FOLDERS

PURPOSE: IDENTIFY PURCHASES THAT DO NOT QUALIFY FOR THE MANUFACTURING EXEMPTION.

UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 1/15

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

TEST PERIOD(S):

RKJ 9/01/92

KBR 9/19/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
881100	12-742-8		SCHOLZEN	2	COATED WIRE	\$36.24	
881100	12-689-8	2121	GE	2	CONTROL	223.00	
881100	12-689-8	2095	CEDAR ELEC	2	ELEC PARTS	167.38	
881200	12-742-8	2177	CEDAR ELEC	2	ELEC PARTS	32.35	
881200	12-762-8	2254	WINELECTRIC	2	ELEC PARTS	83.08	
881200	12-752-8	2231	MT WEST PIPE	2	PIPE	454.22	
881200	12-742-8	2175	CEDAR ELEC	2	ELEC PARTS	611.80	
881200	12-762-8	2212	CEDAR ELEC	2	ELEC PARTS	476.02	
881200	12-762-8	2219	FASCO	2	WASHERS	36.53	
881200	01-543-8	2286	NEVADA BOLT	3	BOLTS	24.16	
881200	12-762-8	2213	CEDAR ELEC	2	ELEC PARTS	220.38	
881200	12-752-8	2221	GRAYBAR	2	ELEC PARTS	224.91	
881200	12-742-8	2182	GRAYBAR ELEC	2	ELEC PARTS	392.35	
881200	12-689-8	2170	WESCO	2	WIRE	103.75	
881200	12-689-8	2140	GRAYBAR ELEC	2	ELEC PARTS	44.12	
881200	01-543-8	2275	GRAYBAR ELEC	3	ELEC PARTS	202.45	
881200	12-742-8	2176	CEDAR ELEC	2	ELEC PARTS	682.91	
881200	12-762-8	2249	S & S STEEL	2	BOLTS	1,012.42	

SUBTOTAL

\$5,028.20

\$0.00

CREDIT FOR TAXES PAID (TAX COLUMN DIVIDED BY 0.0600)

(\$3,803.33)

TOTAL [TO EXHIBIT A-1]

(\$83,803.33)

890100	03-713-8		SCHOLZEN	6	EXPANDED METAL	\$8.49	
890100	02-555-8	2567	AMFAC	5	ELEC. SUPPLIES	18.44	
890100	02-555-8	2621	SCHOLZENS	5	PIPE PARTS	89.05	
890100	03-713-8		AMFAC	6	ELEC PARTS	614.00	
890100	01-713-8	2442	CEDAR ELEC	4	ELEC PARTS	37.05	
890100	01-20-89	2388	CEDAR ELEC	4	ELEC PARTS	13.58	
890100	02-555-8	2588	FASCO	5	WASHERS	52.40	
890100	03-710-8		SCHOLZEN	6	SS WELD ROD	28.79	
890100	02-555-8	2572	BISCO	5	BOLTS	37.80	
890100	01-584-8	2338	GRAYBAR ELEC	3	ELEC PARTS	375.83	
890100	03-713-8		AMFAC	6	ELEC PARTS	1.40	
890100	02-507-8	2498	CEDAR ELEC	4	ELEC PARTS	65.41	
890200	03-710-8	2847	DUSTY S.	6	CAR EXP	19.00	
890200	02-691-8	2728	THE	5	WASHERS	25.20	
890200	03-710-8	2814	CEDAR ELEC	6	ELEC PARTS	18.54	
890200	03-710-8	2825	FASCO	6	WASHERS	78.37	
890200	03-710-8	2876	AMFAC	5	HUBBLE	1.98	
890200	02-691-8	2703	GE	5	5000 VOLT CABLE	480.99	

WH SALES AND USE TAX AUDIT

SCHEDULE 2 2/15

ARGIN INC.

COUNT NUMBER: H02516

BIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

BIT PERIOD(S):

RKJ 9/01/92

KBC 9/7/92

INVOICE	REFERENCE	ACCOUNT	TAX	TAXABLE
NUMBER	NUMBER	CODE BOOK S/U A DESCRIPTION	PAID	AMOUNT
1200 02-691-8	2779 NEVADA BOLT	5	WASHERS	11.59
1200 02-691-8	2795 THB	5	WASHERS	14.73
1300 03-723-8	3029 THB	9	BOLTS	10.44
1300 03-720-8	2884 AMFAC	6	ELEC SUPPLIES	13.46
1300 03-723-8	2984 EWS	9	ELEC PARTS	61.40
1300 03-720-8	2316 KELLY PIPE	6	PIPE	372.94
1300 03-827-8	3082 KELLY	9	PIPE	249.64
1300 03-827-8	3099 SCHOLZEN	9	STEEL	135.20
1300 03-723-3	2935 GLASS STEEL	9	PARTS	54.13
1300 03-723-3	3018 SCHOLZEN PROD	9	STEEL	159.12
1300 03-720-3	2935 SCHOLZENS	6	STEEL	188.85
1300 03-827-8	3054 AMFAC	9	ELEC PARTS	7.40
1300 03-723-3	3014 RELIANCE ELEC	9	MISC PARTS	5.47
1300 03-720-8	2951 THB	6	WASHERS	108.04
1300 04-847-8	3274 CEDAR ELEC	9	ELEC PARTS	144.98
1300 03-720-8	2883 AMFAC	6	ELEC SUPPLIES	161.58
1300 03-723-3	3039 WINELEC	9	ELEC PARTS	118.50
1300 03-723-3	2974 CEDAR ELEC	9	ELEC PARTS	18.61
1300 03-723-3	2994 KELLY	9	PIPE	15.71
1300 03-827-8	3072 FUGATE	9	FABRIC	131.23
1300 03-723-3	3019 SCHOLZEN PROD	9	STEEL	30.83

TOTAL \$3,992.08 \$0.00
 EDIT FOR TAXES PAID (TAX COLUMN DIVIDED BY 0.0600) (\$6,534.67)

TOTAL [TO EXHIBIT A-1] (\$66,534.67)

1400 05-732-3	3443 EJ BARTELLS	10	PARTS	\$1,194.53
1400 04-744-3	3241 RYAN HERCO	9	FLANGE	117.54
1400 05-732-8	3476 NATIONAL STEEL	10	STEEL	38.55
1400 04-847-8	3275 CEDAR ELEC	9	ELEC PARTS	234.00
1400 04-855-3	3387 THB	9	BOLTS	380.01
1400 04-744-8	3208 CONLEY CO	9	PIPE	21.35
1400 05-732-8	3477 NEVADA BOLT	10	BOLTS	82.93
1400 04-847-8	3290 KELLY	9	TAPE	21.72
1400 04-744-8	3232 KELLY	9	PIPE	163.10
1400 04-855-3	3351 GE SUPPLY	9	POWER CABLE	3,425.63
1400 05-732-8	3453 KELLY	10	PIPE	142.47
1400 04-847-8	3299 PDM	9	FLANGE	94.75
1400 04-744-8	3238 PDM	9	STEEL	292.60
1400 04-726-8	3174 THB	9	BOLTS	107.25
1400 04-726-3	3178 WINELECTRIC	9	ELEC PARTS	15.99

UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 3/15

YEARGIN INC.
ACCOUNT NUMBER: H02516
AUDIT PERIOD: 10/01/88 - 12/31/88
SCHEDULE OF ALLOWABLE TAX CREDIT
TEST PERIOD(S):

RKJ 9/01/92
RBE 9/15/94

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE	BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890400	04-726-8	3125	AMFAC	9		ELEC PARTS	63.65	
890400	04-744-8	3186	AMFAC	9		ELEC PARTS	185.84	
890400	05-732-8	3408	AMFAC	10		TAPE	15.47	
890400	04-856-8	3386	SL VALVE	9		MISC	10.58	
890400	04-847-8	3265	AMFAC	9		CONDUIT	102.36	
890400	04-856-8	3398	MASATICH IND	9		MISC	6.97	
890400	04-847-8	3293	LAWSON	9		PIPE	43.50	
890400	04-744-8	3213	ELASTOMER	9		MISC	106.97	
890400	05-732-8	3511	TEMPE IND	10		PIPE/FITTINGS	475.62	
890400	04-856-8	3397	MINN MARION	9		GUAGES	14.40	
890400	05-732-8	3439	DURIRON	10		MOTOR	67.57	
890400	04-726-8	3139	CEDAR ELEC	9		ELEC PARTS	139.55	
890400	05-732-8	3513	THB	10		BOLTS	110.81	
890400	05-732-8	3521	MASATICH IND	10		CPVC PIPE/FITTING	500.52	
890400	05-732-8	3433	CONLEY	10		PIPE	41.38	
890400	05-732-8	3453	HALOCARBON	10		GREASE	153.90	
890400	04-744-8	3211	EMS	9		ELEC PARTS	116.45	
890400	05-732-8	3487	RYAN HERCO	10		STEEL	75.08	
890400	04-726-8	3161	RYAN HERCO	9		MISC	150.16	
890400	05-732-8	3520	MASATICH IND	10		CPVC PIPE/FITTING	1,361.73	
890400	04-856-8	3326	AMFAC	9		ELEC PARTS	162.49	
890400	04-744-8	3253	THB	9		BOLTS	6.14	
890400	04-856-8	3388	THB	9		BOLTS	6.29	
890400	05-732-8	3492	RJ GALLAGHER	10		STEEL	137.74	
890429	05-733-8	3555	GRAYBAR ELECTRIC	11		ELECTRICAL SUPPLIES	8.18	
890429	05-733-8	3570	MASKELL-ROBBINS	11		ADAPTORS	407.88	
890429	05-733-8	3552	EMS	11		CONNECTORS	176.40	
890429	05-733-8	3566	LAWSON YEATES	11		PIPE	743.60	
890429	05-733-8	3592	WINELECTRIC	11		NUTS	9.15	
890429	05-733-8	3554	GLASS STEEL	11		PLATES	19.39	
890429	05-733-8	3576	PDM STEEL	11		METAL	499.20	
890429	05-733-8	3562	KELLY PIPE	11		COUPLINGS	571.85	
890429	05-733-8	3535	AMFAC ELECTRIC	11		CONDUITS	278.41	
890429	05-733-8	3541	BEARING BELT & CHAIN	11		BUSHINGS	16.47	
890429	05-733-8	3567	TEMPE INDUSTRIAL SUPPLY	11		COUPLINGS, TEES	1,514.60	
890429	05-733-8	3548	CONELY CO	11		PIPE	4,161.88	
890429	05-733-8	3595	MASATICH INDUSTRIAL	11		PIPE	2.95	
890429	05-733-8	3565	LAWSON YEATES	11		FLANGES, SOCKETS	754.19	
890429	05-733-8	3594	W R WHITE COMPANY	11		GASKETS	11.50	
890429	05-733-8	3556	HK POWER TOOL SERVICE	11		COUPLINGS	5.90	
890429	05-733-8	3568	THB INC	11		NUTS	72.90	
890429	05-733-8	3538	AMERICAN NDT	11		MOISTURE DETECTOR	14.06	
890429	05-733-8	3538	AMERICAN NDT	11		MOISTURE DETECTOR	72.90	

UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 4/15

MARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

TEST PERIOD(S):

RKJ 9/01/92

1092 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
90500	05-738-8	3870	WASATCH IND	12	PIPE	487.81	
90500	06-732-8	4156	PIPE SHIELDS	14	MISC	143.25	
90500	06-732-8	4129	JCM	14	INST	116.20	
90500	05-738-8	3753	AMFAC	12	ELEC PARTS	50.47	
90500	06-732-8	4104	CODALE ELEC	14	ELEC PARTS	22.07	
90500	06-728-8	3922	CATHODIC PROT	13	MISC	303.62	
90500	05-738-8	3883	PANAMETRICS	12	FLOWMETER	1,481.40	
90500	06-728-8	3998	PDM	13	STEEL/FLANGES	724.16	
90500	06-732-8	4191	TEMPE IND	14	PIPE	812.95	
90500	06-728-8	4016	SCHOLZEN	13	SS STEEL	324.52	
90500	06-732-8	4135	KELLY PIPE	14	PIPE	455.30	
90500	06-728-8	3943	GRAYBAR	13	ELEC PARTS	118.78	
90500	06-732-8	4091	BULLOUGH	14	TANK INSUL	2,190.99	
90500	06-728-8	3989	MIDGLEY	13	FAN	9.81	
90500	06-732-8	4211	WASATCH IND	14	PVC PIPE	3,874.86	
90500	06-728-8	3950	HAYWARD	13	SS STRAINER	458.40	
90500	06-732-8	4172	RACKERS	14	SM	90.70	
90500	06-728-8	3925	DURCO	13	BOX	11.12	
90500	06-728-8	3930	EWS	13	ELEC PARTS	702.59	
90500	06-728-8	3964	JCM	13	VALVES	239.34	
90500	06-732-8	4210	WASATCH IND	14	PVC PIPE	2,878.88	
90500	06-728-8	4029	SS STEEL	13	MISC	5.94	
90500	06-728-8	4027	SYNTECHNICS	13		673.80	
90500	06-728-8	3966	KELLY	13	SS PIPE	1,393.06	
90500	05-738-8	3769	BULLOUGH	12	PARTS	102.31	
90500	06-728-8	3923	CODALE	13	ELEC PARTS	24.07	
90500	06-728-8	4031	THB	13	BOLTS/ETC	304.87	
90500	06-728-8	3967	KELLY	13	SS PIPE	552.55	
90500	05-738-8	3785	EWS	12	ELEC PARTS	530.18	
90500	06-728-8	4048	WASATCH IND	13	PVC PIPE	865.40	
90500	06-728-8	4030	TEMPE IND	13	FLANGE	52.13	
90500	06-728-8	3986	MCJUNKIN	13	TAX DEDUCTED ON PAST INV	(914.68)	
90500	05-738-8	3855	THB	12	BOLTS	45.58	
90500	06-728-8	3910	BULLOUGH	13	ALUN	45.57	
90500	06-728-8	3931	ELASTOMER	13	GASKET	29.91	
90500	06-728-8	3987	MCJUNKIN	13	VALVES	678.94	
90500	05-738-8	3866	WINELEC	12	ELEC PARTS	70.49	
90500	06-728-8	3888	AMFAC	13	ELEC PARTS	144.36	
90500	06-728-8	3933	EF BARTELLS	13	PIPE	254.32	
90500	06-728-8	3942	GRAYBAR	13	ELEC PARTS	58.15	
90500	05-738-8	3871	WASATCH IND	12	PIPE	495.67	
90500	06-728-8	3992	NEVADA BOLT	13	BOLTS	46.55	
90500	06-728-8	3991	NEVADA BOLT	13	STEEL	11.51	



JTAH SALES AND USE TAX AUDIT

SCHEDULE 2 5/15

RKJ 9/01/92
1082 5/15/92YEARGIN INC.
ACCOUNT NUMBER: H02516
AUDIT PERIOD: 10/01/88 - 12/31/88
SCHEDULE OF ALLOWABLE TAX CREDIT
TEST PERIOD(S):

INVOICE		REFERENCE		ACCOUNT		TAX	TAXABLE	
DATE	NUMBER	NUMBER	VENDOR	CODE	BOOK S/U A	DESCRIPTION	PAID	AMOUNT
890500	06-732-8	4217	AMFAC	14		WIRE	256.86	
890500	06-728-8	3996	VALVE FITTING	13		VALVE	148.79	
890500	06-728-8	4032	TJ PROD	13		SHIMS	123.90	
890500	06-728-8	3932	EF BARTELLS	13		PIPE	473.43	
890500	06-732-8	4137	KOLO8 SM	14		DUCT/FLASH	72.13	
890500	06-728-8	4000	RYAN HERCO	13		MISC	90.91	
890500	06-732-8	4146	MCJUNKIN	14		VALVE	235.75	
890500	06-732-8	4192	TH8	14		BOLTS	82.96	
890500	06-738-8	3852	TEMPE IND	12		PIPE	895.36	
890500	06-738-8	3836	RYAN HERCO	12		MISC	71.49	
890500	06-732-8	4110	EJ BARTELLS	14		MISC	355.14	
890500	06-738-8	3813	KELLY	12		PIPE	274.67	
890500	06-738-8	3846	SS STEEL	12		LADDER	152.45	
890500	06-738-8	3795	GRAYBAR	12		ELEC PARTS	173.05	
890500	06-732-8	4153	VALVE & FITTINGS	14		FITTINGS	331.59	
890500	06-738-8	3793	GRAYBAR	12		ELEC PARTS	22.54	
890500	06-738-8	3856	THERMETRICS	12		COUPLING	39.87	
890500	06-738-8	3787	EJ BARTELLS	12		PARTS	1,589.42	
890500	06-732-8	4102	CONLEY	14		PIPING	24.84	
890500	06-732-8	4178	SCHOLTZENS	14		MISC	102.79	
890500	06-732-8	4204	VINSON SUPPLY	14		VALVES	1,616.70	
890500	06-732-8	4218	AMFAC	14		ELEC PARTS	29.83	
890500	06-732-8	4115	GLASS STEEL	14		MISC	10.90	
890500	06-738-8	3863	VALTEX	12		VALVE	3,573.56	
890500	06-738-8	3840	RJ GALLAGHER	12		TUBING	59.53	
890500	06-738-8	3812	KELLY	12		PIPE	2,202.51	
890500	06-732-8	4205	VALVE & FITTING	14		VALVES	493.98	
890500	06-732-8	3789	FRONTIER IND	12		CONTROLS	60.72	
890500	06-732-8	4113	FUGATE	14		MISC	425.29	
890500	06-732-8	4168	RYAN HERCO	14		SHEETS	193.56	
890500	06-732-8	4092	CEDAR ELEC	14		ELEC PARTS	544.82	
890500	06-738-8	3826	NEVADA BOLT	12		BOLTS	63.79	
890500	06-732-8	4149	NEVADA BOLT	14		BOLTS	30.31	
890500	06-738-8	3853	TEMPE IND	12		PIPE	280.29	
890500	06-738-8	3794	GRAYBAR	12		ELEC PARTS	207.32	
890500	06-732-8	4177	SCHOLTZENS	14		MISC	294.74	
890500	06-732-8	4182	SS STEEL	14		BOLTS	42.58	
890500	06-733-8	3724	T J PRODUCTS	11		METAL	11.56	
890500	06-733-8	3717	TEMPE INDUSTRIAL SUPPLY	11		COUPLINGS, BUSHINGS	325.80	
890500	06-733-8	3666	KELLY PIPE	11		BUSHINGS, COUPLINGS	427.88	
890500	06-733-8	3653	HILLI FASTENINGS	11		NUTS, BOLTS	37.40	
890500	06-733-8	3746	EMS	11		ELECTRICAL PARTS	925.88	
890500	06-732-8	3649	GRAYBAR ELECTRIC	11		ELECTRICAL PARTS	77.72	

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.



UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 6/15

YEARGIN INC.

RKJ 9/01/92

ACCOUNT NUMBER: H02516

K92 9/5/92

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

TEST PERIOD(S):

INVOICE REFERENCE			ACCOUNT		TAX	TAXABLE	
DATE	NUMBER	NUMBER	VENDOR	CODE BOOK S/U A	DESCRIPTION	PAID	AMOUNT
390508 05-733-8	3615	CEDAR ELECTRIC	11	11	CONNECTORS	71.08	
390508 05-733-8	3654	HK POWER TOOL SERVICE	11	11	HOSES	23.40	
390508 05-733-8	3737	WASATCH INDUSTRIAL	11	11	COUPLINGS,BUSHINGS	724.14	
390508 05-733-8	3718	TH8 INC	11	11	COUPLINGS,BUSHINGS	253.92	
390508 05-733-8	3713	SPRAYING SYSTEMS	11	11	SPRAY JETS	32.12	
390508 05-733-8	3685	PDM STEEL	11	11	METAL	23.36	
390508 05-733-8	3718	TH8 INC	11	11	COUPLINGS,BUSHINGS	105.47	
390508 05-733-8	3635	DENVER VALVE & FITTING	11	11	ADAPTER	24.17	
390508 05-733-8	3735	WINN MARION	11	11	GAUGE	13.20	
390508 05-733-8	3687	PIPE SHIELDS	11	11	PIPE	649.41	
390508 05-733-8	3728	VINSON SUPPLY	11	11	VALVES	6,035.05	
390508 05-733-8	3732	W R WHITE	11	11	PIPE	34.65	
390508 05-733-8	3671	LAWSON YEATES	11	11	BUSHINGS,COUPLINGS	160.97	
390508 05-733-8	3599	AMFAC ELECTRIC	11	11	CONDUIT	417.74	
390606 06-733-8	4302	TEMPE INDUSTRIAL SUPPLY	15	15	NUTS,BOLTS	34.80	
390606 06-733-8	4300	SALT LAKE VALVE & FITTING	15	15	VALVES	5.88	
390606 06-733-8	4301	TEMPE INDUSTRIAL SUPPLY	15	15	NUTS,BOLTS	4,433.94	
390606 06-733-8	4239	CEDAR ELECTRIC SUPPLY	15	15	ELECTRICAL PARTS	4.20	
390606 06-733-8	4230	AMFAC ELECTRIC	15	15	ELECTRICAL PARTS	29.26	
390606 06-733-8	4233	AFFILIATED METALS	15	15	SHEET METAL	8.53	
390606 06-733-8	4270	XOLOB SHEET METAL	15	15	EXHAUST FANS	5.46	
390606 06-733-8	4322	WASATCH INDUSTRIAL	15	15	COUPLINGS,BUSHINGS	177.29	
390606 06-733-8	4314	VINSON SUPPLY CO	15	15	COUPLINGS	146.58	
390606 06-733-8	4272	LKH INCORPORATED	15	15	EXPANSION JOINTS	204.53	
390606 06-733-8	4279	NEVADA BOLT INC	15	15	NUTS,BOLTS	723.44	
390606 06-733-8	4243	CONELY CO	15	15	PIPE	70.61	
390606 06-733-8	4287	RYAN HERCO PRODUCTS	15	15	COUPLINGS	7.05	
390606 06-733-8	4251	E.J. BARTIELLS	15	15	INSULATION/TANKS	2,104.71	
390606 06-733-8	4236	CEDAR ELECTRIC SUPPLY	15	15	ELECTRICAL PARTS	286.48	
390606 06-733-8	4283	NEENAH	15	15	NUTS,BOLTS	53.28	
390606 06-733-8	4237	BULLOUGH INSULATION	15	15	PIPE	13.54	
390606 06-733-8	4319	WESCO	15	15	COUPLINGS	0.96	
390606 06-733-8	4285	PDM STEEL	15	15	METAL	204.94	
390606 06-733-8	4305	THERMETRICS-WAYERIC	15	15	VALVES	16.21	
390612 06-740-8	4389	JMC INSTRUMENTS	16	16	ELBOWS	2.89	
390612 06-740-8	4373	FUGATE INDUSTRIAL SALES	16	16	COUPLERS	227.06	
390612 06-740-8	4390	KEENAN SUPPLY	16	16	PIPE,FITTINGS	1,790.50	
390612 06-740-8	4423	R J GALLAGHER	16	16	TUBING	8.87	
390612 06-740-8	4419	RYAN HERCO	16	16	CHANNELS,COUPLINGS	924.83	
390612 06-740-8	4410	NEVADA BOLT	16	16	NUTS,BOLTS	380.53	
390612 06-740-8	4370	E J BARTIELLS	16	16	PIPE	351.39	
390612 06-740-8	4416	PDM STEEL	16	16	FLANGES	160.11	

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.

Machine-generated OCR, may contain errors.

UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 7/15

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

TEST PERIOD(S):

RKJ 9/01/92

10229/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890612	06-740-8	4398	KELLY PIPE	16	PIPES	388.74	
890612	06-740-8	4450	VINSON SUPPLY	16	VALVE	30.96	
890612	06-740-8	4391	KEENAN SUPPLY	16	PIPE, FITTINGS	32.18	
890612	06-740-8	4417	PIPE SHIELDS	16	METAL	138.52	
890612	06-740-8	4420	RYAN HERCO	15	CHANNELS, COUPLINGS	3.97	
890612	06-740-8	4475	EJ BARTELLS CO	16	CHILDERS	270.11	
890612	06-740-8	4397	LORD & SONS	16	NUTS, WASHERS, CLAMPS	143.00	
890612	06-740-8	4375	GRAYBAR ELECTRIC	16	LOCKNUTS, WASHERS	20.60	
890612	06-740-8	4372	FASCO	16	NUTS, BOLTS	47.87	
890612	06-740-8	4439	THB INC	16	NUTS, WASHERS	12.16	
890612	06-740-8	4392	KELLY PIPE	16	PIPE, FITTINGS	747.59	
890612	06-740-8	4405	MCJUNKIN CORP	16	VALVES	217.76	
890612	06-740-8	4414	PIPE VALVE AND FITTING	16	PIPES	342.02	
890612	06-740-8	4334	AMFAC ELECTRIC	16	ELECTRICAL PARTS	29.81	
890612	06-740-8	4348	BULLOUGH INSULATION	16	PIPE	48.89	
890620	07-727-8	4527	FUGATE INDUSTRIAL SALES	17	ADAPTORS	133.00	
890620	07-727-8	4565	LIGHTNING BOLT	17	NUTS, BOLTS	19.05	
890620	07-727-8	4510	COOALE ELECTRIC SUPPLY	17	ELECTRICAL SUPPLIES	10.12	
890620	07-727-8	4628	WESCO	17	BUSHINGS	104.64	
890620	07-727-8	4537	HOLBROOK & ASSOCIATION	17	COOLING TOWER INLET SCREEN	10.94	
890620	07-727-8	4633	WASATCH INDUSTRIAL	17	CLAMPS, COUPLINGS, BUSHINGS	160.33	
890620	07-727-8	4585	PIPE VALVE AND FITTING CO	17	SOCKETS, BUSHINGS	47.47	
890620	07-727-8	4613	THERMETRICS-MAYERIC	17	THERMOCOUPLE	38.23	
890620	07-727-8	4632	WASATCH INDUSTRIAL	17	CLAMPS, COUPLINGS, BUSHINGS	258.27	
890620	07-727-8	4610	THB INC	17	FASTENERS	28.10	
890620	07-727-8	4506	CAMBRIDGE-LEE INDUSTRIES	17	COPPER BUS BAR	136.80	
890620	07-727-8	4558	KELLY PIPE	17	PIPE	287.90	
890620	07-727-8	4508	CONELY CO	17	PIPE	1.02	
890620	07-727-8	4520	DEE'S SPIRAL	17	SPIRAL PIPE	12.03	
890620	07-727-8	4584	PIPE VALVE AND FITTING CO	17	SOCKETS, BUSHINGS	142.28	
890620	07-727-8	4577	NEVADA BOLT	17	NUTS, BOLTS	26.80	
890620	07-727-8	4609	THB INC	17	NUTS, BOLTS	230.05	
890620	07-727-8	4575	METRA STEEL	17	STEEL	6.54	
890620	07-727-8	4607	TEMPE INDUSTRIAL SUPPLY	17	COUPLINGS, ELBOWS	992.63	
890620	07-727-8	4488	AFFILIATED METALS	17	METAL	301.06	
890620	07-727-8	4590	RYAN HERCO	17	VALVES, CLAMPS	514.79	
890620	07-727-8	4625	VINSON SUPPLY	17	VALVES	598.97	
890620	07-727-8	4587	PDM STEEL	17	STEEL	49.78	
890620	07-727-8	4630	W.R. WHITE CO	17	PIPE SUPPLIES	33.29	
890620	07-727-8	4529	GLASS STEEL	17	PLATES	13.80	
890620	07-727-8	4557	KEENAN SUPPLY	17	PIPE	113.52	
890620	07-727-8	4522	ELECTRICAL WHOLESOME SUPPLY	17	CARLON	140.61	



SALES AND USE TAX AUDIT

SCHEDULE 2 8/15

MARGIN INC.

RKJ 9/01/92

ACCOUNT NUMBER: H02516

KBR 9/9/92

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

BEST PERIOD(S):

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
0626	07-731-8	4688	CODALE ELECTRIC SUPPLY	18	ELECTRICAL SUPPLIES	44.54	
0626	07-731-8	4683	COLORADO WIRE & CABLE	18	COPPER WIRE	123.30	
0626	07-731-8	4792	INSULATION DISTRIBUTORS	18	VERTICAL RIB SHEETS	221.97	
0626	07-731-8	4694	ELASTOMER PRODUCTS	18	NUTS,BOLTS	147.44	
0626	07-731-8	4744	PIPE VALVE & FITTING	18	COUPLINGS,CLAMPS	95.06	
0626	07-731-8	4766	THB INCORPORATED	18	WEDGE ANCHORS	215.96	
0626	07-731-8	4783	WASATCH INDUSTRIAL	18	BUSHINGS,FLANGES	187.50	
0626	07-731-8	4692	DEE'S SPIRAL	18	BATCH DRYER DUCT	1,024.40	
0626	07-731-8	4717	INSULATION DISTRIBUTORS	18	ELBOWS,WASHERS	250.77	
0626	07-731-8	4722	KELLY PIPE	18	PIPE	39.03	
0626	07-731-8	4658	AFFILIATED METALS	18	SHEET METAL	176.37	
0626	07-731-8	4741	NEVADA BOLT	18	NUTS,BOLTS	80.52	
0626	07-731-8	4762	SALT LAKE VALVE & FITTINGS	18	VALVES	7.42	
0626	07-731-8	4743	PIPE VALVE & FITTING	18	COUPLINGS,CLAMPS	120.66	
0626	07-731-8	4778	VALVE & FITTING	18	VALVES	194.22	
0626	07-731-8	4651	AMFAC ELECTRIC	18	CONNECTORS	38.17	
0626	07-731-8	4720	JPR SYSTEMS	18	BLOWDOWN VALVE	214.20	
0626	07-731-8	4765	TEMPE INDUSTRIAL SUPPLY	18	PIPES,VALVES	773.59	
0626	07-731-8	4696	FUGATE INDUSTRIAL SALES	18	CLAMPS,COUPLERS	186.93	
0626	07-731-8	4749	RYAN HERCO PRODUCTS	18	VALVES,CLAMPS	19.12	
0626	07-731-8	4716	INSULATION DISTRIBUTORS	18	ELBOWS	938.02	
0626	07-731-8	4699	GRAYBAR ELECTRIC CO	18	ELECTRICAL SUPPLIES	195.06	
0626	07-731-8	4745	PFAUDLER U.S. INC	18	FLANGES	149.10	
0626	07-731-8	4738	METRA STEEL	18	METAL	79.42	
0626	07-731-8	4727	LORD & SON	18	NUTS,BOLTS	274.02	
0626	07-731-8	4651	BISCO	18	GEARS,BRUSHES	4.56	
0626	07-731-8	4685	JMC INSTRUMENTS	18	TUBING & FITTINGS	240.78	
0626	07-731-8	4704	HILTI FASTENING	18	NUTS,BOLTS	48.54	

BTOTAL

\$101,595.20 \$0.00

EDIT FOR TAXES PAID (TAX COLUMN DIVIDED BY 0.0600)

(1,693,253.33)

TAL [TO EXHIBIT A-1]

(\$1,693,253.33)

0700	08-805-8	5419	DUPLEX PROD	24	ELEC PARTS	\$37.12	
0700	08-805-8	5506	UNISEAL	24	SEAL	86.19	
0700	08-805-8	5393	AFF METAL	24	METAL	31.97	
0700	08-805-8	5463	NEVADA BOLT	24	BOLTS	103.36	
0700	08-805-8	5456	MCMASTERR CARR	24	PARTS	4.50	
0700	08-805-8	5449	KELLY PIPE	24	PIPE	337.34	
0700	08-805-8	5523	AMFAC ELEC	24	ELEC PARTS	16.75	
0700	08-805-8	5520	KELLY PIPE	24	PIPE	38.71	

UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 9/15

MARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

TEST PERIOD(S):

RKJ 9/01/92

KBC 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890700	08-805-8	5443	INSUL DIST	24	PIPE INSUL	39.24	
890700	08-805-8	5452	LAWSON	24	PIPE/PRIMER	159.10	
890700	08-805-8	5420	EJ BARTELLS	24	MISC	33.78	
890700	08-805-8	5407	BEKSON BOLT	24	GAL BOLTS	109.68	
890700	08-805-8	5494	THB	24	WASHERS	159.00	
890700	08-805-8	5442	INSUL DIST	24	PIPE INSUL	419.16	
890700	08-805-8	5394	AMERON	24	PAINT	108.45	
890700	08-805-8	5388	AMFAC	24	ELEC PARTS	46.56	
890700	08-805-8	5480	VAREC	24	MISC	16.50	
890700	08-805-8	5469	PDM	24	ANGLE	28.33	
890700	08-805-8	5426	FUGATE	24	MISC	76.31	
890700	08-805-8	5512	VALVE & FITTING	24	VALVES	300.17	
890700	08-805-8	5417	CODALE	24	ELEC PARTS	478.34	
890703	07-403-8	4892	S D H	20	METAL CAGE	48.89	
890703	07-403-8	4875	PROCESS EQUIPMENT	20	LEVER HANDLES	545.16	
890703	07-403-8	4831	CODALE ELECTRIC	20	CONDUITS	115.51	
890703	07-403-8	4866	HACK IRON WORKS	20	FLANGES	195.66	
890703	07-403-8	4855	KEENAN SUPPLY	20	PIPE	113.78	
890703	07-403-8	4843	GRAYBAR ELECTRIC	20	CONNECTORS	45.13	
890703	07-403-8	4895	TEMPE INDUSTRIAL SUPPLY	20	COUPLINGS, ELBOWS	112.87	
890703	07-403-8	4884	SCHOLZEN PRODUCTS	20	SHEET METAL	123.08	
890703	07-403-8	4881	RAPID POWER TECHNOLOGIES	20	FUSES	34.75	
890703	07-403-8	4809	APPLIED CONTROL EQUIPMENT	20	REGULATOR, GAUGE	22.28	
890703	07-403-8	4806	AMFAC ELECTRIC	20	ELECTRICAL SUPPLIES	177.64	
890703	07-403-8	4872	PIPE VALVE & FITTING	20	NUTS, BOLTS	352.37	
890703	07-403-8	4859	LIGHTNING BOLT	20	NUTS, BOLTS	8.75	
890703	07-403-8	4907	WASATCH INDUSTRIAL	20	COUPLINGS, BUSHINGS	367.19	
890703	07-403-8	4832	C B A	20	DAMPERS	14.46	
890703	07-403-8	4888	STEVE REGAN COMPANY	20	HYPRO PUMP	55.87	
890703	07-403-8	4840	E J BARTELLS	20	INSULATORS	1,186.09	
890703	07-403-8	4857	K W INSTRUMENTS	20	GAUGE	6.47	
890703	07-403-8	4871	PIPE VALVE & FITTING	20	VALVES, COUPLINGS	231.37	
890703	07-403-8	4906	WESCO	20	COUPLINGS	49.83	
890703	07-403-8	4873	PDM STEEL	20	SHEET METAL	63.71	
890703	07-403-8	4867	NEVADA BOLT INC	20	NUTS, BOLTS	364.24	
890710	07-735-8	5264	PDM STEEL	19	METAL	18.38	
890710	07-735-8	5253	PIPE VALVE & FITTING	19	GASKETS, CAPS	336.62	
890710	07-735-8	4957	FLICKINGER VALVE CO	19	RELIEF VALVES	35.02	
890710	07-735-8	4928	BEKSON BOLT	19	NUTS, BOLTS	455.81	
890710	07-735-8	4954	E J BARTELLS	19	INSULATION, TANKS	22.53	
890710	07-735-8	4920	AFFILIATED METALS	19	METAL	68.83	
890710	07-735-8	4936	CONELY CO	19	FLANGE	9.29	



UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 10/1.

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

TEST PERIOD(S):

RKJ 9/01/92

KBL 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890710	07-735-8	4934	COLORADO WIRE & CABLE	19	WIRE	10.13	
890710	07-735-8	4937	CASHCO/JMC INSTRUMENTS	19	REGULATORS	167.64	
890710	07-735-8	4956	FUGATE INDUSTRIAL SALES	19	HOSE, CLAMPS	325.96	
890710	07-735-8	5268	PIPING TECHNOLOGY	19	PIPE	118.44	
890710	07-735-8	4962	GAFFEY INC	19	POWER CORD	29.16	
890710	07-735-8	4939	CODALE ELECTRIC	19	ELECTRICAL SUPPLIES	184.30	
890710	07-735-8	5322	WASATCH INDUSTRIAL	19	PIPE, CHECK VALVES	552.73	
890710	07-735-8	4982	LIGHTNING BOLT	19	NUTS, BOLTS	40.07	
890710	07-735-8	5320	WINN MARION	19	GUAGES	85.83	
390710	07-735-8	4941	CBA	19	VOLUME DAMPERS	14.46	
890710	07-735-8	4955	FOWLER FIBERGLASS GRATING	19	GRATING	199.30	
390710	07-735-8	5295	THB INC	19	POP RIVETS, NUTS	214.60	
390710	07-735-8	4999	PIPE VALVE & FITTING	19	GASKETS, CAPS	262.01	
390710	07-735-8	4942	CADILLAC PLASTIC	19	TUBING	9.81	
390710	07-735-8	5264	PIPE VALVE & FITTING	19	GASKETS, CAPS	1.72	
390710	07-735-8	4949	DEE'S SPIRAL	19	PIPES/BLENDER BLDG	1,900.45	
390710	07-735-8	5321	WASATCH INDUSTRIAL	19	PIPE, CHECK VALVES	1,370.23	
390710	07-735-8	4931	CEDAR VALLEY PUMP SERVICE	19	PIPE	36.00	
390710	07-735-8	5270	RYAN HERCO	19	WASHERS, CLAMPS, CHANNELS	1,788.41	
390710	07-735-8	4997	PEERLESS PUMPS	19	SEAL KITS	11.85	
390710	07-735-8	5315	WESCO	19	REDUCERS	87.16	
390710	07-735-8	4984	L N CURTIS & SONS	19	HOSE	68.75	
390710	08-735-8	5315	WESCO	22	REDUCER	87.16	
390710	07-735-8	5276	REPUBLIC SUPPLY	19	PIPE	96.73	
390710	07-735-8	5309	VINSON SUPPLY	19	VALVES	558.62	
390710	07-735-8	4998	PIPE VALVE & FITTING	19	GASKETS, CAPS	850.81	
390710	07-735-8	4985	LEIGHTON-STONE CORP	19	NUTS	2.57	
390710	07-735-8	5285	S & S STEEL	19	RUBBER CLOSURE STRIP	261.18	
390710	07-735-8	5297	THERMETRICS-HAYERIC	19	RTD JACKS	5.40	
390710	07-735-8	4977	KELLY PIPE	19	GASKETS	342.46	
390710	07-735-8	4971	INSULATION DISTRIBUTORS	19	ELBOWS, PIPE COVERINGS	763.54	
390710	07-735-8	5294	TEMPE INDUSTRIAL SUPPLY	19	VALVES, COUPLINGS, BUSHING	243.33	
390710	07-735-8	4972	JMC INSTRUMENTS	19	BUSHINGS	27.00	
390710	07-735-8	4990	MACK IRON WORKS	19	STRAINERS	30.92	
390710	07-735-8	4917	ARNETT MFG	19	PIPE	7.43	
390710	07-735-8	4963	HILTI FASTENING	19	FASTENERS	19.83	
390710	07-735-8	4915	AMFAC ELECTRIC	19	ELECTRICAL SUPPLIES	385.34	
390710	07-735-8	4944	CUPPS INDUSTRIAL SUPPLY	19	MECHANICAL SEALS	300.00	
390717	08-726-8	5077	PDM STEEL	21	PIPE	64.69	
390717	08-726-8	5111	VINSON SUPPLY	21	FLANGES	147.20	
390717	08-726-8	5070	NATIONAL STEEL	21	PIPE	121.72	
390717	08-726-8	5054	INTERNATIONAL TECHTEAR	21	SEALS, BANDING	635.92	
390717	08-726-8	5070	EMVIED ETEDEPACCE COATING	21	ETIDE TCEINE	125.50	

SALES AND USE TAX AUDIT

SCHEDULE 2 11/15

MARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

BEST PERIOD(S):

RKJ 9/01/92

1988 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
90717 08-726-8		5062	LIGHTNING BOLT	21	NUTS,BOLTS	10.00	
90717 08-726-8		5110	VAN LONDON COMPANY	21	ELECTRODE	28.86	
90717 08-726-8		5025	CEDAR ELECTRIC	21	SWITCHES,CLAMPS	69.64	
90717 08-726-8		5082	PROCESS INSTRUMENTS	21	SWITCH	39.84	
90717 08-726-8		5099	TEMPE INDUSTRIAL SUPPLY	21	COUPLINGS,SOCKETS	740.60	
90717 08-726-8		5080	PIPING TECHNOLOGY	21	PIPE	3.06	
90717 08-726-8		5076	PFAUDLER U.S.INC.	21	PIPE	15.28	
90717 08-726-8		5051	INTERNATIONAL GAS SYSTEMS	21	HOSE	72.00	
90717 08-726-8		5057	JMC INSTRUMENTS	21	TUBULAR GLASS	38.40	
90717 08-726-8		5100	TYLER DAWSON	21	GASKETS	57.86	
90717 08-726-8		5044	HENDRIX STEEL/FABRICATION	21	BASKET STRAINERS	67.58	
90717 08-726-8		5117	WASATCH INDUSTRIAL	21	VALVES,RINGS	89.49	
90717 08-726-8		5095	STEWART BROS ELECTRIC	21	HEATER ELEMENTS	60.63	
90717 08-726-8		5036	EWS	21	ELECTRICAL SUPPLIES	391.33	
90717 08-726-8		5084	RYAN HERCO	21	VALVES	441.33	
90717 08-726-8		5035	DAVIS INSTRUMENTATION	21	POWER SUPPLY	19.20	
90717 08-726-8		5037	E J BARTELLS	21	TACKS	261.45	
90717 08-726-8		5034	DEE'S SPIRAL	21	PIPE/CRYSTALLIZER	20.36	
90717 08-726-8		5112	VALVE & FITTING INC	21	VALVES,COUPLINGS,BUSHING	628.45	
90717 08-726-8		5013	AMFAC ELECTRIC	21	CONNECTORS,PLATES	367.82	
90717 08-726-8		5126	INDUSTRIAL INSTRUMENTS	21	AMPROBES	85.31	
90717 08-726-8		5014	AMFAC ELECTRIC	21	BREAKERS	40.99	
90717 08-726-8		5116	W R WHITE COMPANY	21	COUPLING	9.22	
90717 08-726-8		5015	ARNETT MFG	21	NIPPLES	2.03	
90717 08-726-8		5041	GRAYBAR ELECTRIC	21	STEEL BRACKETS	442.80	
90717 08-726-8		5053	INSULATION DISTRIBUTORS	21	ELBOWS,WASHERS	1,215.09	
90717 08-726-8		5073	PIPE VALVE & FITTING	21	BOLTS,CHECK VALVES	154.08	
90724 08-735-8		5223	LIGHTNING BOLT	22	NUTS,BOLTS	112.45	
90724 08-735-8		5237	PDM STEEL	22	BRACKETS	94.87	
90724 08-735-8		5331	THB INCORPORATED	22	NUTS	15.10	
90724 08-735-8		5333	TRANSCAT INC	22	CALIBRATORS	125.82	
90724 08-735-8		5346	WASATCH INDUSTRIAL	22	VALVES,FLANGES	553.19	
90724 08-735-8		5159	BENSON BOLT	22	BOLTS,NUTS	102.00	
90724 08-735-8		5353	AFFILIATED METALS	22	SHEET METAL	32.23	
90724 08-735-8		5200	HILTI FASTENING	22	FASTENERS	40.90	
90724 08-735-8		5343	VALVE & FITTING	22	VALVES	523.54	
90724 08-735-8		5224	LN CURTIS & SONS	22	HOSE	88.53	
90724 08-735-8		5212	INSULATION DISTRIBUTORS	22	POP RIVETS,ELBOWS	686.08	
90724 08-735-8		5340	VINSON SUPPLY	22	VALVES,TEES	908.87	
90724 08-735-8		5238	PHOENIX METALLURGICAL	22	WASHERS	294.00	
90724 08-735-8		5234	PIPE VALVE & FITTING	22	VALVES	505.09	
90724 08-735-8		5347	WASATCH INDUSTRIAL	22	VALVES,FLANGES	130.76	
90724 08-735-8		5170	COLORADO WIRE & CABLE	22	CABLE	568.30	

TAX SALES AND USE TAX AUDIT

SCHEDULE 2 12/15

EARGIN INC.

ACCOUNT NUMBER: H02516

JDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

EST PERIOD(S):

RKJ 9/01/92

PBC 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
10724	08-735-8	5235	PIPE VALVE & FITTING	22	VALVES	131.70	
10724	08-735-8	5217	JHC INSTRUMENTS	22	VALVE SETS	41.52	
10724	08-735-8	5195	FUGATE INDUSTRIAL SALES	22	HOSES	54.62	
10724	08-735-8	5341	VINSON SUPPLY	22	VALVES, TEES	3.20	
10724	08-735-8	5132	AMFAC ELECTRIC	22	ELECTRICAL SUPPLIES	96.15	
10724	08-735-8	5222	LAWSON YEATES	22	COUPLINGS, ELBOWS	65.16	
10724	08-735-8	5196	FLUIDIC TECHNIQUES	22	PLATES	7.80	
10724	08-735-8	5295	THB INCORPORATED	22	POP RIVETS	214.60	
10724	08-735-8	5178	CODALE ELECTRIC SUPPLY	22	ELECTRICAL SUPPLIES	128.01	
0724	08-735-8	5213	INSULATION DISTRIBUTORS	22	PIPE COVERINGS	23.23	
0724	08-735-8	5154	BOLT CENTER	22	BOLT	9.56	
0724	08-735-8	5197	GLASS STEEL	22	CABLE TRAYS	2,734.95	
0724	08-735-8	5220	KELLY PIPE	22	PIPE	94.20	
0724	08-735-8	5258	S D H	22	WIRE DOOR	14.32	
0724	08-735-8	5198	GLASS STEEL	22	CABLE TRAYS	2,183.10	
0724	08-735-8	5241	RYAN HERCO	22	CLAMPS	1,080.49	
0724	08-735-8	5162	CEDAR ELECTRIC	22	ELECTRICAL SUPPLIES	27.03	
0724	08-735-8	5190	ELASTOMER PRODUCTS	22	NUTS, BOLTS	84.12	
0724	08-735-8	5191	E J BARTELLS	22	NUTS, BOLTS	50.84	
0724	08-735-8	5219	J C H WIRE & CABLE	22	CABLE	15.88	
0725	08-735-8	5384	WASATCH INDUSTRIAL	22	COUPLINGS	66.00	
0725	08-735-8	5363	CEDAR ELECTRIC	22	CONNECTORS	15.43	
0800	09-737-8	5840	AMERON	25	PAINT	93.00	
0800	09-737-8	5855	WASATCH IND	25	PARTS	13.75	
0800	08-811-8	5643	BULLOUGH	23	MISC	7.41	
0800	09-737-8	5971	WASATCH IND	25	FITTINGS	39.82	
0800	08-811-8	5645	CEDAR ELEC	23	ELEC PARTS	53.88	
0800	09-737-8	5901	CODALE ELEC	25	ELEC PARTS	42.39	
0800	08-811-8	5707	THB	23	BOLTS	111.02	
0800	09-737-8	5839	AFF METAL	25	METAL	22.48	
0800	09-737-8	5756	AMFAC	25	ELEC PARTS	101.63	
0800	09-737-8	5808	PDM	25	STEEL	6.99	
0800	08-809-9	5562	EWS	24	ELEC PARTS	6.72	
0800	09-737-8	5977	GREYBAR	25	ELEC PARTS	7.05	
0800	08-809-9	5617	VALVE & FITTING	24	FITTINGS	133.22	
0800	09-737-8	5893	BENSON BOLT	25	BOLTS	41.42	
0800	09-737-8	5852	WESCO	25	CONDUIT	56.75	
0800	09-737-8	5922	INSUL DIST	25	PIPE INSUL	343.83	
0800	09-737-8	5801	LAWSON	25	PVC CEMENT	351.70	
0800	09-737-8	5906	EJ BARTELLS	25	MISC	15.36	
0800	08-809-9	5561	EJ BARTELLS	24	FITTINGS	331.24	
0800	09-737-8	5813	ROCKY MTN FAB	25	GRATING	182.81	



UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 13/15

YEARGIN INC.

RKJ 9/01/92

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/88

KAC 4/4/92

SCHEDULE OF ALLOWABLE TAX CREDIT

TEST PERIOD(S):

INVOICE REFERENCE			ACCOUNT		TAX	TAXABLE
DATE	NUMBER	NUMBER VENDOR	CODE BOOK S/U A	DESCRIPTION	PAID	AMOUNT
390800	09-737-8	5959 THB	25	BOLTS/WASHERS	101.11	
390800	08-811-8	5644 CEDAR ELEC	23	ELEC PARTS	24.96	
390800	09-737-8	5695 CEDAR ELEC	25	ELEC PARTS	69.82	
390800	08-809-9	5567 FUGATE	24	PARTS	12.64	
390800	09-737-8	5966 VINSON	25	VALVES	226.87	
390800	08-811-8	5625 AMFAC	23	ELEC PARTS	486.05	
390800	09-737-8	5905 ELASTOMER	25	MISC	6.48	
390800	08-811-8	5676 INSUL DIST	23	PIPE INSUL	326.24	
390800	09-737-8	5968 VALVE & FITTING	25	VALVES	14.58	
390800	09-737-8	5780 GRAYBAR ELEC	25	ELEC PARTS	11.06	
390800	09-737-8	5799 KELLY PIPE	25	PIPE	168.89	
390800	08-809-9	5541 AMFAC	24	ELEC PARTS	122.31	
390800	09-737-8	5970 WASATCH IND	25	FITTINGS	171.62	
390800	09-737-8	5823 THB	25	WASHERS	64.50	
390800	08-811-8	5835 WASATCH IND	25	FITTINGS	114.57	
390800	08-811-8	5658 EMS	23	ELEC PARTS	132.90	
390800	09-737-8	5791 INDUST INST	25	PARTS	39.77	
390800	08-809-9	5880 AMFAC	25	ELEC PARTS	24.87	
390800	08-809-9	5584 KELLY PIPE	24	PIPE	20.80	
390800	08-809-9	5609 THB	24	WASHERS	259.89	
390800	08-809-9	5578 INSUL DIST	24	PIPE INSUL	547.02	
390800	08-811-8	5714 VINSON	23	VALVE PARTS	7.20	
390800	08-809-9	5518 WASATCH IND	24	VALVE	61.52	
390800	08-811-8	5683 LAWSON	23	VALVE	39.99	
390800	09-737-8	5775 E J BARTELLS	25	MISC PARTS	35.45	
390800	08-811-8	5716 VALVE FITTING	23	VALVES	31.85	
390800	09-737-8	5929 LAWSON	25	PIPE	236.88	
390800	08-811-8	5624 AMFAC	23	ELEC PARTS	432.70	
390800	09-737-8	5953 STEWART BROS	25	ELEC PARTS	12.88	
390800	08-809-9	5593 PDM	24	STEEL	31.70	
390800	08-811-8	5652 FUGATE	23	FABRIC	279.88	
390800	08-811-8	5657 EJ BARTELLS	23	TAX DEDUCTED	(73.50)	
390800	08-811-8	5653 CODALE ELEC	23	ELEC PARTS	306.69	
390800	08-811-8	5718 WASATCH IND	23	BOLTS/ETC	428.23	
390800	09-737-8	5894 AMERON	25	PAINT	90.90	
390800	09-737-8	5833 VALVE & FITTING	25	FITTINGS	8.82	
390800	08-809-9	5552 BULLDOUGH	24	PIPE INSUL	20.91	
390800	08-809-9	5564 EYCO	24	HOSE	44.73	
390800	09-830-8	6239 AMFAC	26	ELEC PARTS	81.29	
390800	09-830-8	6151 AMERON	26	PAINT	75.30	
390800	09-830-8	5175 FUGATE	26	MISC	35.96	
390800	09-830-8	6291 THB	26	MISC	15.14	
390800	9-744-8	5082 AMERON	26	PAINT	37.44	

TAX SALES AND USE TAX AUDIT

SCHEDULE 2 14/15

EARGIN INC.

CCOUNT NUMBER: H02516

UDIT PERIOD: 10/01/88 - 12/31/88

CHEDULE OF ALLOWABLE TAX CREDIT

EST PERIOD(S):

RKJ 9/01/92

KRR 9/9/92

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOOK S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
90900	9-744-8	6009	CEDAR ELEC	26	ELEC PARTS	29.84	
90900	9-744-8	6066	WW GRANGER	26	ELEC PARTS	17.42	
90900	9-744-8	6076	AMFAC	26	ELEC PARTS	152.59	
90900	9-744-8	6039	LAWSON	26	PIPE	150.78	
90900	9-744-8	5996	AMFAC	26	ELEC PARTS	101.06	
90900	9-744-8	6008	BULLOGH	26	PIPE INSUL	17.58	
90900	9-744-8	6024	EYCO	26	CLAMPS	100.04	
90900	9-744-8	5995	AMFAC	26	ELEC PARTS	483.98	
90900	09-830-8	6183	INSUL DIST	26	PIPE INSUL	156.70	
90900	9-744-8	6082	AMERON	26	PAINT	11.63	
90900	9-744-8	6138	VALVE & FITTING	26	VALVE	207.76	
90900	9-744-8	6061	VINSON	26	PIPE	106.00	
90900	9-744-8	6043	METRA	26	STEEL	39.38	
90900	09-830-8	6172	EWS	26	CONDUIT	320.87	
90900	09-830-8	6259	GREYBAR ELEC	26	ELEC PARTS	110.01	
90900	09-830-8	6298	WASATCH IND	26	MISC	125.34	
90900	9-744-8	6092	EWS	26	ELEC PARTS	144.03	
90900	09-830-8	6144	AMFAC	26	ELEC PARTS	84.95	
90900	9-744-8	6035	INSUL DIST	26	PIPE INSUL	341.34	
90900	09-830-8	6187	KWAL	26	PAINT	18.80	
90900	9-744-8	6062	VALVE & FITTING	26	VALVES	10.60	
90900	09-830-8	6240	AMFAC	26	ELEC PARTS	106.11	
90900	09-830-8	6171	ELASTOMER	26	SILICONE	12.38	
90900	09-830-8	6289	STEWART ELEC	26	ELEC PARTS	26.91	
90900	9-744-8	6108	LAWSON	26	PIPE FITT.	76.59	
90900	9-744-8	6097	GRAYBAR	26	ELEC PARTS	24.00	
90900	9-744-8	6104	INSUL DIST	26	PIPE INSUL	134.36	
90900	9-744-8	6023	EJ BARTELLS	26	PIPE INSUL	66.90	
90900	9-744-8	6137	VINSON	26	VALVE	493.89	

TOTAL

\$51,406.91

\$0.00

CREDIT FOR TAXES PAID (TAX COLUMN DIVIDED BY 0.0600)

(\$56,781.83)

TOTAL [TO EXHIBIT A-1]

(\$56,781.83)

1000	10-730-8	5353	INSULATION DIST	27	PIPE INSUL	\$76.54	
1000	10-730-8	6399	WASATCH IND.	27	FITTINGS	390.87	
1000	10-730-8	6365	KELLY PIPE	27	COUPLINGS	62.13	
1000	10-752-8	6467	CODALE ELEC	28	ELEC PARTS	15.83	
1000	10-825-8	6533	AMFAC ELEC	28	ELEC PARTS	7.92	

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.

Machine-generated OCR, may contain errors.

TOTAL

\$552.29

\$0.00

UTAH SALES AND USE TAX AUDIT

SCHEDULE 2 15/15

YEARGIN INC.

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/88 - 12/31/88

SCHEDULE OF ALLOWABLE TAX CREDIT

TEST PERIOD(S):

RKJ 9/01/92

KBJ 9/19/92

INVOICE		REFERENCE		ACCOUNT		TAX		TAXABLE
DATE	NUMBER	NUMBER	VENDOR	CODE	BOOK S/U A	DESCRIPTION	PAID	AMOUNT
TOTAL [TO EXHIBIT A-1]								(\$9,221.50)

SOURCE: BOUND BOOKS OF TAX PAID/ACCRUED INVOICES.

PURPOSE: ALLOW CREDIT FOR TAX PAID OR ACCRUED IN ERROR ON MATERIALS EXEMPT

UNDER UTAH STATE TAX COMMISSION RULE R865-19-85S. ITEMS LISTED HAD TAX PAID

TO A UTAH VENDOR, OR ACCRUED AND PAID UNDER ACCOUNT H02516

Tab 3

GALE K. FRANCIS # 4213
Assistant Attorney General
JAN GRAHAM #1231
Attorney General
Attorneys for Respondent
160 East 300 South, 5th Floor
P O Box 140874
Salt Lake City, Utah 84114-0874
Telephone: (801) 366-0375

BEFORE THE UTAH STATE TAX COMMISSION

YEARGIN, INC. and WESTERN	)	MEMORANDUM IN OPPOSITION
ELECTROCHEMICAL COMPANY,	)	TO PETITIONER'S MOTION IN
Petitioners,	)	LIMINE
	)	Appeal No. 93-0002
vs.)	
	)	Account No. H-02516
AUDITING DIVISION OF)	
THE UTAH STATE TAX COMMISSION,	)	Tax Type: Sales & Use
)	
Respondent.)	

Respondent, Auditing Division of the Utah State Tax Commission, by and through its counsel, Gale K. Francis, Assistant Attorney General, responds to the Petitioners' Motion in Limine and Memorandum in Support of Motion in Limine as follows:

I. THE LANGUAGE OF THE STIPULATION IS AMBIGUOUS AS TO PETITIONER'S PARTICIPATION AS PURCHASER OF MATERIALS FOR USE IN CONSTRUCTION OF THE FACILITY.

1. Attached and incorporated herein by reference as Exhibit A is the Joint Stipulation of Facts dated April 29, 1994 which is the subject matter of Petitioner's Motion in Limine.

2. As quoted in paragraph 12 of that Joint Stipulation, -it states, "United Engineers assisted WECCO in purchasing materials for use in the construction of the facility and located suppliers, obtained price quotations and arranged for WECCO to make purchases of materials." This statement is ambiguous and leaves open the possibility that United Engineers (Yeargin) may have purchased materials itself for construction of the facility.

3. Some time after entering into the Stipulation of Facts, the Respondent, and then counsel for the Petitioner, R. Glen Woods, became aware that Petitioner Yeargin, Inc. did in fact purchase, invoice, and pay for materials used in the construction of the facility. Attached to this pleading and incorporated herein by referenced as Exhibit B are documents which are demonstrative of the purchases by Yeargin. Exhibit B includes the furnish and install subcontract entered into by United Engineers and Constructors Inc. and Yeargin, Inc. as contractor and one of the subcontractors Western Rock Products Corp. Additionally, an exemption certificate issued by Yeargin, Inc. to Western Rock Products Corp., a portion of the schedules included in the audit showing the line item for an invoiced purchased by Yeargin, an invoice for that purchase, check register for that purchase, Western Rock's invoice, the same documentation for a

purchase from Comfort Zone Systems, and an additional purchase from Protocol Communications, Inc. are included in Exhibit B. These documents are demonstrative of direct purchases being made by Yeargin Inc. and showing the error in assuming that United Engineers did not purchase materials for the construction of the facility.

4. Another sentence within paragraph 12 of the Joint Stipulation of Facts states, "Title to all materials purchased for use at the WECCO facility passed directly to WECCO from the suppliers." The stipulation, however, does not make clear when title to those materials passed. It is possible that title passed after those materials had been incorporated into real property, as alleged by the Respondent.

II. TO CORRECT A MISTAKE OF FACT, OR IN THE INTEREST OF JUSTICE AND FAIR PLAY, A JUDGE MAY SET ASIDE A STIPULATION FOR INADVERTENCE OR JUSTIFIABLE CAUSE.

5. Even if Petitioner's arguments regarding the language of the paragraph are well taken, the Administrative Law Judge and the Utah State Tax Commission should relieve the parties from being bound by this Stipulation since it is clearly erroneous and is not in the interest of justice. Trial judges have the authority to do so, as documented by Supreme Court of Utah in State v. Velasquez, 672 P.2d 1254 (Utah 1983) when the Utah

Supreme Court said: "Parties are bound by their trial stipulations unless upon motion they are relieved therefrom by the court, which may, in the interest of justice and fair play, set aside a stipulation for inadvertence or justifiable cause. First of Denver Mortgage Investors v. C.N. Zundel and Associates, Utah, 600 P.2d 521 (1979); Klein v. Klein, Utah, 544 P.2d 472 (1975)." (Emphasis added)

6. Also included in the Velasquez opinion it states: "A mistake of fact may also constitute a valid ground for setting aside a stipulation if the mistake is not due to failure to exercise due diligence and it could not have been avoided by the exercise of ordinary care. Marrujo v. Chavez, 77 N.M. 595, 426 P.2d 199 (1967); Cartwright v. Atlas Chemical Industries Inc., Okla. Ct. App., 593 P.2d 104 (1979). See also United Factors v. T.C. Associates Inc., 21 Utah 2d 351, 445 P.2d 776 (1968)."

7. At the time of the stipulation, counsel for the parties relied upon the representations of R. Glen Woods in drafting and agreeing to paragraph 12 of the Joint Stipulation. Obviously, subsequent investigation showed the error should anyone interpret paragraph 12 to state that Yeargin Inc. had not purchased materials. To that extent, the Joint Stipulation reflects a mistake of fact. There is ample justifiable cause to set aside

that paragraph.

8. At a minimum, having been apprised of the ambiguous language in the Joint Stipulation, the case law allowing a trial judge to correct and/or set aside a stipulation for inadvertence and justifiable cause, and the clear identification of a factual dispute regarding the subject matter of paragraph 12 in the Joint Stipulation, the Administrative Law Judge and the Tax Commission should denied Petitioner Yeargin Inc.'s Motion in Limine.

DATED this 18th day of December, 1996.

Gale K. Francis by
Gale K. Francis
Assistant Attorney General John C. H. C.

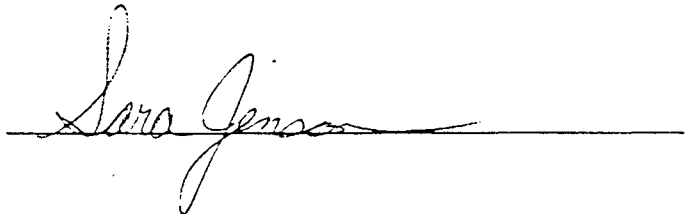
CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December, 1996, a copy of the foregoing Memorandum in Opposition to Petitioner's Motion in Limine was hand-delivered to the following:

Robert A. Peterson
Giauque, Crockett, Bendinger & Peterson
First Instate Plaza
170 South Main, Ste. 400
Salt Lake City UT 84101

Craig Sandberg, Director
Brad Simpson, Deputy Director
Bert Ashcroft
Auditing Division
Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

G. Blaine Davis
Administrative Law Judge
Utah State Tax Commission
210 North 1950 West
Salt Lake City UT 84134

A handwritten signature in cursive script, appearing to read "Sara Jensen", is written over a solid horizontal line.

ag464/gkf/ycarginl.mem

[illegible]

Center City, Wash

[illegible]

00-C-005

$$\frac{E}{E_0}$$

EXHIBIT B



PROJECT

CONSTRUCTION

CORPORATION

• A DIVISION OF YEARGIN INC. •

PAGE NO 1 of 7	REQUISITION NUMBER SC-08	ACCOUNT NUMBER 000805000	NUMBER 7013 9079001
Western Rock Products Corp. 1405 N. Bulldog Road Cedar City, UT 84720 Attn: Mr. Wayne Smith (801) 586-6718		DIRECT CORRESPONDENCE TO: PROJECT CONSTRUCTION CORPORATION c/o UNITED ENGINEERS & CONSTRUCTORS INC. 4055 S. Spencer St., Suite 216 Las Vegas, NV 89119 Attn: Mr. Brad Decker (702) 796-7434	

AMENDMENT SUMMARY	CHECK EACH REVISION AND COMPLY WITH ALL CHANGES.
PREVIOUS AMENDMENT SUMMARIES, IF ANY, ARE RECOUNTED ON LAST AMENDMENT PAGE.	

AGREEMENT

This Subcontract is made between Yeargin Inc./PCC Division, hereinafter referred to as Contractor, and Western Rock Products Corporation, a Utah Corporation, hereinafter referred to as Subcontractor.

Effective Date:

This Subcontract shall become effective upon full execution between both Subcontractor and Yeargin Inc./PCC Division, and upon receipt of Insurance Certificates called for in Section 10.0 of the attached General Conditions.

Insurance Certificates must show Subcontract number and be directed to the attention of Mr. Brad Decker, Materials Group.

SUBCONTRACT GENERAL CONDITIONS FORM 7900-300 ATTACHED

0113A/20/sd

COPY 12/10/88

PAGE NO		NUMBER
2	WESTERN ROCK PRODUCTS CORPORATION	7013 9079001

PART I - STATEMENT OF WORK

A. Scope of Work

The Subcontractor shall supply all labor supervision, materials, tools, equipment and insurance to supply Ready Mixed Concrete Services as required by the Contractor, from the Subcontractor's Portable Batch Plant located on-site, and Permanent Batch Plant located in Cedar City, Ut. Services provided by the Subcontractor will include, but not be limited to the following:

1. Mobilization/Demobilization of Portable Batch Plant and related equipment and facilities.
2. Provide materials.
3. Transportation of Mixed Concrete.
4. The Subcontractor may batch and transport the first round of daily deliveries from his Cedar City Plant.
5. It is the understanding of the Contractor, that the Subcontractor will utilize his Cedar City Plant as a supplement to the Portable Plant located on site. However, in the case of a small requirement for Ready Mixed Concrete for any one day, the Subcontractor may select to batch and transport the entire requirement for that day from his Cedar City Plant.

Contractor will furnish to Subcontractor the following:

1. Adequate lay down and operating space.
2. The Contractor will provide, at no cost to the Subcontractor, 480V power within 400' of site.
3. Water will be provided and transported via adequate means to Subcontractor's water storage tanks.
4. Site Superintendent to direct and assist operations.
5. Off site parking for Subcontractor's personnel.
6. Badging
7. Designated wash out area within reasonable distance of job-site.

Subcontractor shall furnish and be responsible for, in addition to the Items indicated in the Specification for Ready Mixed Concrete, Spec. No. 9079001-B-101, the following:



PROJECT

CONSTRUCTION

CORPORATION

• A DIVISION OF YEARGIN INC. •

PAGE NO		NUMBER
3	WESTERN ROCK PRODUCTS CORPORATION	7013 9079001

1. Portable Sanitary Facilities
2. Offices, if desired
3. Communication
4. Drinking Water
5. Fuel
6. Equipment Maintenance
7. Supplies
8. Adequate water and material storage

B. Location of Work

PEPCON Production, Inc., Ammonium Perchlorate Project, approximately 17.3 miles West of Cedar City, UT on County Highway 379.

C. Submittals

Subcontractor is to submit all data to United Engineers & Constructors, Inc., Stearns-Roger Division, 4055 S. Spencer, Suite 216, Las Vegas, NV 89119, Attn: Mr. D.E. Dyer.

D. TERMS AND CONDITIONS ADDITIONS:

1. Priority Rating:

You are required to adhere to the following priority rating and to extend this rating in writing all of your lower tier material suppliers and subcontractors.

"This is a rated Subcontract certified for national defense use, and you are required to follow all the provisions of the Defense Priority and Allocation System (DPAS) regulation (15 CFR 350)."

This Subcontract is rated D0-H6.

Signed

Garrett G. Whitney

2. Modifications to General Conditions:

Delete Section 8.0, Invoicing and Payment.



PROJECT

CONSTRUCTION

CORPORATION

• A DIVISION OF YEARGIN INC. •

PAGE NO		NUMBER
4	WESTERN ROCK PRODUCTS CORPORATION	7013 9079001

PART II - PERIOD OF PERFORMANCE

The Subcontractor shall begin supplying Ready Mixed Concrete on November 9, 1988, and complete services on or about July, 1989.

PART III - CONSIDERATION AND PAYMENT

A. Subcontract Type:

This is a Firm Unit Price type Subcontract.

B. Consideration:

Contractor agrees to pay Subcontractor for complete, satisfactory, and timely performance of the sublet work as outlined in Part I, Section A, Scope of Work, a sum not-to-exceed \$500,000.00, based on the following fixed Unit Prices:

<u>Item</u>	<u>Description</u>	<u>Unit Price/C.Y.</u>
1.	Mobilization/Demobilization	\$12,000.00
2.	2,000 PSI Plain Concrete furnished in accordance with Spec. No. 9079001-B-101.	
	Delivered from Portable Batch Plant	\$ 45.50
	Delivered from Cedar City Plant	\$ 47.00
3.	2,000 PSI Red Concrete furnished in accordance with Spec. No. 9079001-B-101.	
	Delivered from Portable Batch Plant	\$ 58.00
	Delivered from Cedar City Plant	\$ 59.00
4.	3,000 PSI Plain Concrete furnished in accordance with Spec. No. 9079001-B-101. <i>6 sack</i>	
	Delivered from Portable Batch Plant	\$ 50.00
	Add for 1 1/2" Aggregate	\$ 2.00
	Delivered from Cedar City Plant	\$ 51.00
	Add for 1 1/2" Aggregate	\$ 2.00
5.	4,000 PSI Plain Concrete furnished in accordance with Spec. No. 9079001-B-101. <i>6 sack</i>	
	Delivered from Portable Batch Plant	\$ 53.50 ✓
	Delivered from Cedar City Plant	\$ 55.00

PAGE NO.		NUMBER
5	WESTERN ROCK PRODUCTS CORPORATION	7013 9079001

<u>Item</u>	<u>Description</u>	<u>Unit Price/C.Y.</u>
-------------	--------------------	------------------------

6. 4,000 PSI Concrete with 1/2" Polypropylene Fibers (1 1/2 pounds/c.y.) furnished in accordance with Spec. No. 9079001-B-101.

Delivered from Portable Batch Plant	\$60.00
Deduct for 3,000 PSI Concrete, Item 6	\$(2.00)

3,000 PSI Concrete with 1/2" Polypropylene Fibers (1 1/2 pounds/c.y.) furnished in accordance with Spec. No. 9079001-B-101.

Delivered from Cedar City Plant	\$62.00
Deduct for 3,000 PSI Concrete, Item 6	\$(4.00)

58.00

3,000 PSI Concrete with 1/2" Polypropylene Fibers (1 1/2 pounds/c.y.) furnished in accordance with Spec. No. 9079001-B-101.

7. 3/4" Aggregate for use as drainage material on-site

\$ 5.25

Additional Unit Pricing Consideration:

Addition to Unit Pricing to meet cold weather concreting requirements Spec. No. 9079001-B-101, Section No. 8	\$ 3.00
--	---------

Addition to Unit Pricing for Delivery required before 6:00 a.m., or after 6:00 p.m.	\$ 5.00
---	---------

Addition to Unit Pricing for Delivery required on Sunday, in emergency situations and by mutual agreement between Subcontractor and Contractor.	\$20.00
---	---------

An additional \$100.00 per load will be charged to the Contractor for load under 5 c.y., delivered from Cedar City Plant.

C. Payment:

The Subcontractor agrees to submit to the Contractor an invoice for material supplied, every 15 days. Terms of payment will be Net 15 days on invoice.

D. Waiver of Lien:

Final payment will not be made by Contractor to the Subcontractor until the notarized Contractor's Affidavit and Waiver of Lien Form 69-543 has been received at the Contractor's paying office. The properly executed document should accompany final invoice to insure no delay in payment to the Subcontractor.

E. Taxes:



• A DIVISION OF YEARGIN INC. •

PAGE NO.		NUMBER
6	WESTERN ROCK PRODUCTS CORPORATION	7013 9079001

F. Invoicing:

Subcontractor shall mail invoice (original and 2 copies) to:

Yeargin Incorporated/PCC Division
P.O. Box 126
Cedar City, UT 84720
Attn: Mr. D.A. English

G. Tax Withholding:

By Law, Contractor is required to report to the Internal Revenue Service (IRS), on IRS Form 1099, payments made by Contractor concerning the procurement of services described herein. If the Taxpayer Identification Number (TIN) of the Subcontractor is not included in the report to the IRS, the Contractor is obligated to withhold income tax at the rate of 20% from all payments and forward such withholding to the IRS. (The TIN for individuals is a social security number; for nonincorporated businesses it is an employer identification number.) In compliance with this requirement, Subcontractor shall provide Contractor with Subcontractor TIN (Form 69-548). In lieu of such compliance all payments from Contractor to Subcontractor shall be subject to the aforementioned withholding provision.

PART IV - CONTRACTUAL CONTENTS

The contractual contents which constitute this Subcontract at the time of execution hereof are the Agreement consisting of Parts I through V, pages 1 through 7 including signature page; and the following which are incorporated herein by reference as if set forth in full:

- A. Subcontract General Conditions Form 7900-301
- B. TIN Form 69-548
- C. Affidavit and Waiver of Lien Form 69-543
- D. Specification for Ready Mixed Concrete, Spec. No. 9079001-B-101
- E. Exhibit "A" Safety & Health Regulations
- F. Utah State Sales and Use Tax Certificate No. 02516

PRECEDENCE OF DOCUMENTS

In the event of conflicts, inconsistencies or omissions in the Contractual Documents, the order of precedence for resolving same shall be as follows:

- 1. Agreement

PAGE NO		NUMBER
7	WESTERN ROCK PRODUCTS CORPORATION	7013 9079001

2. Subcontract General Conditions Form 7900-301

Specifications and Drawings; Subcontractor shall, in writing, immediately notify Mr. Dustin Schwartz, Construction Manager, of any apparent conflicts, omissions, or other discrepancies between specifications and information provided as part of this Subcontract. The Construction Manager will obtain clarification and promptly transmit clarification, in writing, to the Subcontractor.

PART V - ENTIRE AGREEMENT

This Subcontract contains the entire understanding between the Subcontractor and the Contractor and there are no understandings or representations not set forth or incorporated by reference herein. No subsequent modifications of this Subcontract shall be of any force or effect unless in writing, signed by a duly authorized representative of Yeargin Inc./PCC Division

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract on the dates indicated below.

SUBCONTRACTOR

WESTERN ROCK PRODUCTS CORP.

BY Danell G. Whitney

TITLE PRESIDENT

DATE Nov. 28, 1988

CONTRACTOR

YEARGIN INC/PCC DIVISION

BY [Signature]

TITLE _____

DATE NOV. 29, 1988

SALES AND USE TAX EXEMPTION CERTIFICATE (CONT.)

APPLICABLE FOR;

SALES TO AGRICULTURAL PRODUCERS, CERTAIN MINING COMPANIES
AND MINERAL PRODUCERS, AND CERTAIN MANUFACTURING COMPANIES

To (Name of Vendor): WESTERN ROCK PRODUCTS CORP.

The person signing this certificate **MUST** check the applicable box showing the basis for which the exemption is being claimed. Questions should be directed (preferably in writing) to Taxpayer Services, Utah State Tax Commission, 160 East Third South, Salt Lake City, Utah 84134, Telephone (801) 530-4848, or 1-800-662-4335, if within Utah but outside the Salt Lake City area.

☐ **AGRICULTURAL PRODUCER.** I certify that I am a commercial agricultural producer or farmer and qualify for the Utah sales and use tax exemption on certain purchases of tangible personal property.

1. Purchases eligible for exemption include such items as:

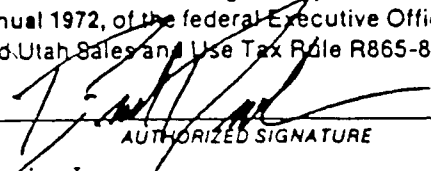
- a. feed, seed and seedlings
- b. fertilizer, sprays and insecticides
- c. baling ties and twine
- d. fuels purchased for heating orchards or operating off-highway farm machinery
- e. farm machinery, equipment and supplies used primarily and directly in producing agricultural products to be resold
- f. hand tools with a unit price of \$100 or more
- g. equipment used primarily for moving farm products or personnel within actual farming area
- h. storage bins and sheds not converted to realty, used to protect fertilizers, seeds, feed, etc.

2. Purchases NOT eligible for exemption include such items as:

- a. medicines and veterinary supplies
- b. hand tools with a unit price of less than \$100
- c. supplies, equipment, sheds or containers used in the sale or the distribution of farm products (including all equipment used for storage of farm products ready for shipment to market)
- d. general maintenance, janitorial and cleaning equipment and supplies
- e. lumber, cement, pipe, steel, etc., that is to be converted to a permanent improvement to real estate
- f. vehicles subject to any state licensing requirements regardless to what use it is put
- g. items not used or consumed primarily and directly in farming operations

☐ **MINERAL FACILITY.** For new construction, expansion or modernization. (Special Mining Exemption Number assigned by the Tax Commission K - _____.) I hereby certify that the materials, machinery, equipment and services purchased are to be used in a qualified new construction, expansion or modernization project of mineral facilities as described in Utah Sales and Use Tax Rule R865-84S.

☐ **MANUFACTURING FACILITY.** For new or expanding operations. (Sales Tax License No. 02516.) I certify that the machinery and equipment purchased is for use in new or expanding operations (excluding normal operating replacements) in a Utah manufacturing facility described within the SIC Codes of 2000-3999, of the Standard Industrial Classification Manual 1972, of the federal Executive Office of the President, Office of Management and Budget. I further certify that I have read Utah Sales and Use Tax Rule R865-85S, and to the best of my knowledge, these purchases qualify for this exemption.



AUTHORIZED SIGNATURE
Yeargin Inc.
NAME OF BUSINESS OR INSTITUTION

Contract Administrator

TITLE
4055 S. Spencer
STREET ADDRESS

11-22-88
DATE
(702) 796-7434
TELEPHONE NUMBER

Las Vegas
CITY
NV
STATE
89119
ZIP CODE

To be valid this certificate must be filled in completely, including a check mark in the proper box. Please sign, date and, if applicable, include your license or exemption number.

DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.

NOTE TO VENDOR: _____ Machine-generated OCR may contain errors. Keep this certificate on file since it must be available for audit review

AM SALES AND USE TAX AUDIT

SCHEDULE 1 4/14

ARGIN INC.

RKJ 9/01/92

COUNT NUMBER: HC2516

DIT PERIOD: 10/01/88 - 12/31/89

RECHARGES SUBJECT TO TAX

ST PERIOD(S): NONE

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
0300	32529	2042	ROCKY MTN FAB	4	BOILER MAKE-UP WATER TANK		17,197.00
0300	32529	7020	ROCKY MTN FAB	4	750,000 GAL WATER STORAGE TANK		153,376.00
0300	297782	5019	BREXELBROOK	7	LEVEL SENSE FLOOD DRAIN SWMP		1,977.04
0300	REL55	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		2,211.69
0300	REL64	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		346.67
0300	5233	13630	ICH	31	GROVE CRANE #71653		60,644.98
0300	REL62	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		7,491.57
0300	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		528.03
0300	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,622.43
0300	CK2899/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		17.15
0300	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		8,857.27
0300	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		506.53
0300	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		470.34
0300	CK2899/REL3	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		679.84
0300	523065	4023	GRAYBAR ELECTRIC	6	YARD LIGHTS		853.00
0300	CK 2856	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		28,856.25
0300	CK 2857	7013	WESTERN ROCK PRODUCTS	8	READY MIX CONCRETE		10,603.00
0300	CK 2952	5119	N.E.T.S.	10	TOOL RENTAL	437.77	9,132.26
0300	20833	5738	CURTIS STEEL	13	COATED REBAR		257.00
0300	390331	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		1,323.00
0300	11639	4022	ELECTRICAL WHOLESALE	6	RECEPTACLES		1,102.50
0300	390322	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,543.10
0300	249	1001	S & S STEEL	2	ANCHOR BOLT RODS/DRILLED PIERS/REL50		2,370.73
0300	249	1001	S & S STEEL	2	ANCHOR BOLT ROD/PUMPHOUSE/REL49		421.00
0300	304452	4013	GRAYBAR ELECTRIC CO	6	LIGHTING FIXTURES ANODE BLOC		2,321.50
0300	390323	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,780.00
0300	CK2860/REL3	1001	S & S STEEL	1	WELD PLATES/SHOP WAREHOUSE BLOC		903.45
0300	3944	1002	POLYDRAIN	2	TRENCH DRAINS AND CATCH BASINS		2,957.64
0300	523070	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		970.53
0300	390324	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		1,839.00
0300	30738-5	5153	SECO	10	COMPUTER RENTAL		690.00
0300	30189	5337	SECO	11	RENT WORD PROCESSOR		275.00
0300	CK2373/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		75.98
0300	CK2373/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,233.40
0300	CK2373/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		112.51
0300	CK2373/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,853.15
0300	CK2373/REL4	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		2,766.09
0300	390346	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		2,013.00
0300	30853	10000	SPECIALITY GRAPHICS	16	VOUCHER CHECKS		86.50
0300	REL59	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT NOTE 6		122.03
0300	256	1001	S & S STEEL	2	ANCHOR BOLT ROD/DRILLED PIERS/REL54		382.50
0300	254	1001	S & S STEEL	2	ANCHOR BOLT RODS.PUMP HOUSE/REL52		2,872.75
0300	MC-12399	4036	MATERIAL CONTROL INC.	6	EMERGENCY LIGHTING FIXTURES		14,906.60
0300	390360	10122	WESTERN ROCK PRODUCTS	16	PEA GRAVEL		335.00

WEIGHT	11/11/89	12/11/89	1/11/90	2/11/90	3/11/90	4/11/90
DATE REC'D	3-6-89	3-10-89	3-14-89	3-15-89	3-16-89	3-18-89
REC. REPORT NO.	F2375	F2495	F2593	F2642	F2615	F2645

PAGE NO 1 of	DATE 2/27/89	REQUISITION 2266	ACCOUNT See Below	RELEASE NO.	ORDER NO. 10122-797
-----------------	-----------------	---------------------	----------------------	-------------	------------------------

REQUIRED AT DESTINATION _____

TERMS NET 30

59

[illegible]

ATTN: MR. BOWEN/ENGLISH
SHOW NAME PLATE DATA, SERIAL
NUMBER, ETC., IF APPLICABLE.
ORDER COMPLETE ☒ DATE 7/5-89

ORDER COMPLETE ☒ DATE 7/5-89

ORDER COMPLETE ☒ DATE 7/5-89

REMARKS:

ITEM	QUANTITY	UNIT	DESCRIPTION	QTY REC'D	
1	4200	TEN	GRAVEL, FEA		
	436			436.00	F1
	461.7			461.7	F2
	475.5			475.5	F3
	296.15			296.15	F4
	296.2			296.2	F5
	331.05			331.05	F6
	40.05			40	F7
	40.04			40.04	F8
	369.65			369.65	F9
	323.20			323.20	F10
	493.10			493.10	F11
	351.35			351.35	F12
	385.70			385.70	F13
	101.6			101.6	F14
			Total		
			4391.24		

Purchase Order Terms and Conditions C3/ 1 at

BOX

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

GREENVILLE, S.C. 29606

05-PAK-05

WAGE BROTHERS COMPANY

FIRST INTERSTATE BANK of UTAH
CEDAR CITY, UTAH 81-2/1240

DATE

04/10/89

PAY

FORTY SEVEN THOUSAND ONE HUNDRED TWENTY ONE DOLLARS
AND ONE CENTS

***4712:

TO THE
ORDER
OF

WESTERN ROCK
1405 NORTH BULLDOG ROAD
CEDAR CITY UTAH 84720

FEA

COPY NOT NEGOTIABLE

DETACH AND RETAIN

NO RECEIPT REQUIRED

THE ATTACHED CHECK IS IN FULL PAYMENT OF ITEMS LISTED BELOW. IF INCORRECT, RETURN STATEMENT AND CHECK INTACT.

P.O. NO.	INVOICE NUMBER	DATE	AMOUNT	RETAINED AMOUNT	OTHER	NET
890-10110	89034124	04/10/89	1839.00	0.00	0.00	1839.00
890-10111	89034131	04/10/89	1823.00	0.00	0.00	1823.00
890-10112	89034147	04/10/89	4232.50	0.00	0.00	4232.50
890-10113	89034194	04/10/89	520.00	0.00	0.00	520.00
890-10114	89034195	04/10/89	6717.00	0.00	0.00	6717.00
890-10115	89034196	04/10/89	10138.00	0.00	0.00	10138.00
890-10116	89034197	04/10/89	9480.17	0.00	0.00	9480.17
890-10117	89034198	04/10/89	3704.38	0.00	0.00	3704.38
890-10118	89034199	04/10/89	8671.00	0.00	0.00	8671.00

DISTRIBUTION					DISTRIBUTION				
ACCOUNT	DETAIL	✓	AMOUNT	✓	ACCOUNT	DETAIL	✓	AMOUNT	✓
0000431000 M			3662.00		0000205000 M			43459.01	
COMPILED BY		AUDITED BY		APPROVED BY		ENTERED ON REGISTER BY		POSTED TO SUBSIDIARY LEDGER	
								JOB COST ACCTS REG OTHER	

P.O. BOX 856
CEDAR CITY, UTAH 84720
PHONE 801-586-6718

CUSTOMER NO.
2104

DATE
06-MAR-89

WESTERN ROCK PRODUCTS
A
SAVAGE BROTHERS COMPANY
"Service, Quality, & Experience"

820 NORTH 1080 EAST
ST. GEORGE, UTAH 84770
PHONE 801-628-4285

PAGE

INVOICE N
890333

S
O
L
D
T
O

YEARGIN INC.
P.O. BOX 126
ATTN: MR. DON ENGLISH
CEDAR CITY, HUT 84720

J
O
B

PO # - 10122 03-06-89

DATE	DELIVERY TICKET	PRICE PER YD	QUANTITY	CONCRETE \$	CALCIUM AMOUNT	HOT WATER AMOUNT	OVERTIME	EXCESSIVE UNLOAD AMT	OTHER	SUB-TOTAL	TAX	TOT
06/89	C04296	10.00	28.40	284.00		PEA GRAVEL				284.00		284.
06/89	C04297	10.00	24.05	240.50		PEA GRAVEL				240.50		240.
06/89	C04298	10.00	23.45	234.50		PEA GRAVEL				234.50		234.
06/89	C04299	10.00	26.55	265.50		PEA GRAVEL				265.50		265.
06/89	C04300	10.00	22.35	223.50		PEA GRAVEL				223.50		223.
06/89	C04301	10.00	29.20	292.00		PEA GRAVEL				292.00		292.
06/89	C04304	10.00	28.30	283.00		PEA GRAVEL				283.00		283.

FILE COPY
D
C
R
T
N
3/17/89

INVOICE APPROVAL
VENDOR 60010 10/22
INV # 890333
INV DATE 3/6 DUE DATE 4/10
ACCT # A31000 \$ 1823.00
ACCT # \$
DISC \$
TAX \$
NET 1823.00
FRT \$
APPROVED CD

F2375

ICE SUMMARY
01

182.30
TOTAL QUANTITY

1823.00
TOTAL INVOICE

INCOME AND USE TAX AUDIT

SCHEDULE 1 10/14

RKJ 9/01/92

JIN, INC.

JNT NUMBER: H02616

PERIOD: 10/01/88 - 12/31/88

ASSES SUBJECT TO TAX

PERIOD(S): NONE

INVOICE	REFERENCE	ACCOUNT	TAX	TAXABLE
NUMBER	NUMBER VENDOR	CODE BOX S/U A DESCRIPTION	PAID	AMOUNT
12 61289	12520 CURTIS STEEL CO	25 PATCH COMPOUND		350.00
12 1713	12825 STANDARD IND STRUCTURES	25 CLOSURE STRIPS FOR PENETRATIONS		637.00
13 320234	12427 DOOLEY TACKABERRY	24 FIRE PROTECTION EQUIPMENT		74.00
14 677133	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		3,828.50
15 906071	12000 ACON RENTALS	22 RADIO RENTALS		1,030.00
19 679005	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		4,488.58
19 13131	12382 PIPELINE INSPECTION CO	24 RENTAL HOLIDAY DETECTOR		420.00
20 CK4505/REL1	1000 CURTIS STEEL CO	1 REBAR/CONCRETE REINFORCEMENT		699.06
20 CK4505/REL3	1000 CURTIS STEEL CO	1 REBAR/CONCRETE REINFORCEMENT		329.00
20 CK 4623	7013 WESTERN ROCK PRODUCTS	8 READY MIX CONCRETE		9,555.33
21 579040	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		115.72
21 62039	6888 SECO	14 COMPUTER RENTAL/FOR SCHEDULING DEPT		1,500.00
21 8955	9051 WECO/INDUSTRIAL SALES	15 LAUNDRY EQ	NOTE 1	13,130.00
21 24330	10484 GLENN'S SCAFFOLDING	12 LEASE SCAFFOLDING EQUIP		851.20
21 46127	10340 PROTOCOL	21 RADIO RENTALS		3,375.00
21 46126	10340 PROTOCOL	21 RADIO RENTALS		300.00
21 62189	12653 CURTIS STEEL	25 REBAR FOR HCK STORAGE TANK FOUNDATION		2,013.57
22 23338	12886 J & J BUILDING	27 JT. COMPOUND/S PAPER		270.87
25 CK4582	1000 CURTIS STEEL CO	1 REBAR/CONCRETE REINFORCEMENT		453.10
25 1329	2081 COMFORT ZONE SYSTEMS	4 AIR HANDLING UNIT		3,975.00
26 684432	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		2,433.22
26 682359	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		2,026.05
26 CK 4730	7013 WESTERN ROCK PRODUCTS	8 READY MIX CONCRETE		8,952.50
26 10027	10027 FARMERS DIST.	16 TRAILER-RENT		400.00
26 1759	10568 COMFORT ZONE SYS	15 EXHAUST FAN/WELDER AREA		1,175.00
27 693107	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		930.22
27 8043	12790 BLACK HAWK SLAG	25 SANDBLAST SAND		1,424.00
29 684771	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		1,098.00
29 684761	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		2,249.10
30 24370	10484 GLENN'S SCAFFOLDING	15 LEASE SCAFFOLDING EQUIP		851.20
30 106805	12553 VAN LONDON COMPANY	25 REPLACEMENT ELECTRODE		420.00
30	WESTERN ROCK PRODUCTS	ALLOW 5% FOR EXEMPT CONCRETE		(20,584.51)

AL [TO EXHIBIT A-1]

\$1,753,115.14

1700 CK 5315	7013 WESTERN ROCK PRODUCTS	8 READY MIX CONCRETE		\$424.00
1700 CK 5317	7013 WESTERN ROCK PRODUCTS	8 READY MIX CONCRETE		3,197.75
1700 CK 5316	7013 WESTERN ROCK PRODUCTS	8 READY MIX CONCRETE		825.00
1700 CK 5315	7013 WESTERN ROCK PRODUCTS	8 READY MIX CONCRETE		13,823.50
1700 CK 5344	7013 WESTERN ROCK PRODUCTS	8 READY MIX CONCRETE		2,576.00
1700 CK 5009	7013 WESTERN ROCK PRODUCTS	8 READY MIX CONCRETE		2,000.00
1705 685351	4034 GRAYBAR ELECTRIC	6 LIGHTING FIXTURES		882.00
1705 60789-3	5159 SECO	10 COVER-RENTAL		590.00

CHECK
NUMBER

5475

COMFORT ZONE SYSTEMS
6882 EDNA
LAS VEGAS, NV 89102

DATE

07/24/89

PAY

FOUR THOUSAND SEVENTY FIVE DOLLARS AND NO CENTS

****4075.00

TO
THE
ORDER
OFCOMFORT ZONE SYSTEMS
6882 EDNA

LAS VEGAS

NV 89102

Signature **NEGOTIABLE**

DETACH AND RETAIN

NO RECEIPT REQUIRED

THE ATTACHED CHECK IS IN FULL PAYMENT OF ITEMS LISTED BELOW IF INCORRECT RETURN STATEMENT AND CHECK INTACT

P.O. NO	INVOICE NUMBER	DATE	AMOUNT	RETAINED AMOUNT	OTHER	NET
PO-10668	1769	07/24/89	4075.00	0.00	0.00	4075.00

DISTRIBUTION					DISTRIBUTION				
ACCOUNT	DETAIL	✓	AMOUNT	✓	ACCOUNT	DETAIL	✓	AMOUNT	✓
0000P00000 M			4075.00						
COMPILED BY		AUDITED BY		APPROVED BY		ENTERED ON REGISTER BY		POSTED TO SUBSIDIARY LEDGER	
						JOB COST		ACCTS REC	
								OTHER	

Comfort Zone Systems, Inc.

AIR CONDITIONING EQUIPMENT

SALES COPY	
P	_____
C	_____
R	_____
T	_____
N	_____
DT	6-28-89

I N V O I C E

TO: Yeargin Inc./PCC Div.
P.O. Box 126
Cedar City, UT 84720

DATE: June 26, 1989

INVOICE NO.: 1769

JOB NAME: PEPCON/Carmon

JOB NUMBER: 890042

BOOK ORDERS: 1A, 2A

ACCOUNT NO.: 131

P.O.: 10668-797

DESCRIPTION:

Carmon fan and exhaust accessories
complete per your purchase order.

INVOICE APPROVAL	
VENDOR	C0036 PO# 10668
INV. #	1769
INV. DATE	6/26 DUE DATE 7/24
ACCT #	P0000 \$ 4075.00
ACCT #	\$
DISC	TAX
FRT	NET 4075.00
APPROVED	Rt
F-4943 + F6633	

STATE: UTAH

AMOUNT \$ 4,075.00

COUNTY: IRON / 6 % TAX \$ RESALE

TOTAL \$ 4,075.00

NET 30 DAYS
PLEASE SEND

Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.

Machine-generated OCR may contain errors. ONE COPY OF INVOICE WITH YOUR CHECK TO THE ADDRESS BELOW

YEARGIN

PURCHASE ORDER

Aprox TVO \$4,225.00

PAGE NO 1 of 2	DATE 4/4/89	REQUISITION 4534	ACCOUNT See Below	RELEASE NO.	ORDER NO. 10668-797
-------------------	----------------	---------------------	----------------------	-------------	------------------------

SHIPMENT PROMISED 6/5/89 REQUIRED AT DESTINATION

F.O.B. FACTORY FFA TERMS NET 30

191	COMFORT ZONE SYSTEMS, INC. P.O. BOX 80690 LAS VEGAS, NV 89180-0690 PHONE * 702-871-4113 Attn DICK	INVOICING: MAIL ORIGINAL AND COPIES WITH ORIGINAL SHIPPING DOCUMENTS TO YEARGIN, INC./ PCC DIVISION. P.O. BOX 126 CEDAR CITY, UTAH 84720 ATTN: MR. DON ENGLISH SHIPPING CHARGES TO BE SHOWN SEPARATELY. THIS ORDER IS SUBJECT TO THE TERMS, CONDITIONS AND SPECIFICATIONS STATED HEREIN AND ATTACHED.
-----	---	--

CONSIGN TO: YEARGIN/PCC, ATTN: MR. MIKE DENKERS, MATERIAL MANAGER (see attached directions)

ROUTE VIA: VENDOR

SUPPLEMENTS VENDOR MUST CHECK EACH REVISION AND COMPLY WITH ALL CHANGES

SUPP NO	DATE	
*1	4/12/89	TO CHANGE QUANTITY OF ITEM 4. TVO DOES NOT CHANGE.
*2	9/19/89	ADD ITEM *7, ADD \$150.00 TO TVO

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE
1	1	EA	FAN, CAR-MON FUME EXHAUST 25F WITH 3 HP 460 VOLT MOTOR, V-BELT DRIVE W/GUARD, VIBRATION ISOLATION RAIL, AND WALL MOUNTING PLATFORM Dely Date 6/5/89 Account Code 0000W13000/M CIDNo 8087	\$1,925.00
2	1	EA	DAMPER, FIBRE AIRE COUNTER BALANCED BACKDRAFT 426 Dely Date 6/5/89 Account Code 0000W13000/M CIDNo 8088	\$385.00
3	1	EA	FITTING, DUCT WITH 14" INLET TAPER AND FLEX CONNECTOR, 14" X 12" TAPER AIRFLOW TEE, 12" X 10" TAPER AIRFLOW TEE, 10" X 8" TAPER AIRFLOW TEE, 8" X 6" TAPER AIRFLOW TEE, 6" AIRFLOW TEE, 6" CLEANOUT CAP, AND 5 - 6" MAGNETIC FLUME RECEPTACLE Dely Date 6/5/89 Account Code 0000W13000/M CIDNo 8089	\$860.00

Purchase Order Terms and Conditions C3/ attached.

INTENDED USE

APPROX TVO

IMPORTANT: ORDER AND ACCOUNT
NUMBERS MUST APPEAR ON ALL IN-
VOICES AND SHIPPING DOCUMENTS,
PACKAGES AND CORRESPONDENCE.

BUYER: YEARGIN, INC. / PCC DIVISION

BY

DIRECT CORRESPONDENCE TO:
BOX

SALES AND USE TAX EXEMPTION CERTIFICATE (CONT.)

APPLICABLE FOR:

**SALES TO AGRICULTURAL PRODUCERS, CERTAIN MINING COMPANIES
AND MINERAL PRODUCERS, AND CERTAIN MANUFACTURING COMPANIES**

To (Name of Vendor): Comfort Zone Systems, Inc.

The person signing this certificate **MUST** check the applicable box showing the basis for which the exemption is being claimed. **Questions** should be directed (preferably in writing) to Taxpayer Services, Utah State Tax Commission, 160 East Third South, Salt Lake City, Utah 84134, Telephone (801) 530-4848, or 1-800-662-4335, if within Utah but outside the Salt Lake City area.

☐ **AGRICULTURAL PRODUCER.** I certify that I am a commercial agricultural producer or farmer and qualify for the Utah sales and use tax exemption on certain purchases of tangible personal property.

1. Purchases eligible for exemption include such items as:

- a. feed, seed and seedlings
- b. fertilizer, sprays and insecticides
- c. baling ties and twine
- d. fuels purchased for heating orchards or operating off-highway farm machinery
- e. farm machinery, equipment and supplies used primarily and directly in producing agricultural products to be resold
- f. hand tools with a unit price of \$100 or more
- g. equipment used primarily for moving farm products or personnel within actual farming area
- h. storage bins and sheds not converted to realty, used to protect fertilizers, seeds, feed, etc.

2. Purchases NOT eligible for exemption include such items as:

- a. medicines and veterinary supplies
- b. hand tools with a unit price of less than \$100
- c. supplies, equipment, sheds or containers used in the sale or the distribution of farm products (including all equipment used for storage of farm products ready for shipment to market)
- d. general maintenance, janitorial and cleaning equipment and supplies
- e. lumber, cement, pipe, steel, etc., that is to be converted to a permanent improvement to real estate
- f. vehicles subject to any state licensing requirements regardless to what use it is put
- g. items not used or consumed primarily and directly in farming operations

☐ **MINERAL FACILITY.** For new construction, expansion or modernization. (Special Mining Exemption Number assigned by the Tax Commission K - _____.) I hereby certify that the materials, machinery, equipment and services purchased are to be used in a qualified new construction, expansion or modernization project of mineral facilities as described in Utah Sales and Use Tax Rule R865-84S.

☒ **MANUFACTURING FACILITY.** For new or expanding operations. (Sales Tax License No. 02516.) I certify that the machinery and equipment purchased is for use in new or expanding operations (excluding normal operating replacements) in a Utah manufacturing facility described within the SIC Codes of 2000-3999, of the **Standard Industrial Classification Manual 1972**, of the federal Executive Office of the President, Office of Management and Budget. I further certify that I have read Utah Sales and Use Tax Rule R865-85S, and to the best of my knowledge, these purchases qualify for this exemption.

M. L. Smith
AUTHORIZED SIGNATURE
Urgon Inc.
NAME OF BUSINESS OR INSTITUTION
8/7-89
DATE
(801) 586 9942
TELEPHONE NUMBER

Material Manager
TITLE
P.O. Box 126
STREET ADDRESS
Cedar City UT 84720
CITY STATE ZIP CODE

To be valid this certificate must be filled in completely, including a check mark in the proper box. Please sign, date and, if applicable, include your license or exemption number.

DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION

YEARGIN INC.

RKJ 9/01/92

ACCOUNT NUMBER: H02516

AUDIT PERIOD: 10/01/92 - 12/31/92

PURCHASES SUBJECT TO TAX

TEST PERIOD(S): NONE

DATE	INVOICE NUMBER	REFERENCE NUMBER	VENDOR	ACCOUNT CODE BOX S/U A	DESCRIPTION	TAX PAID	TAXABLE AMOUNT
890706	60293	6337	SECO	11	RENT WORD PROCESSOR		275.00
890706	20324415	13081	RYALL ELEC	28	ANCHOR BOLTS-PARK LOT		224.00
890706	035909	13058	MCMASTER CARR	28	DOOR PULLS		155.70
890706	17516	13061	JAKES WIRE ROPE SVC	28	NYLON SLINGS		518.86
890711	683667	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		(201.67)
890711	683691	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		(3,080.45)
890711	1913	10553	COMFORT ZONE SYS	19	DAMPER		150.00
890713	683703	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		155.00
890715	307073	12000	ACOM RENTALS	22	RADIO RENTALS		1,030.00
890717	CK 5115	7013	WESTERN ROCK PRODUCTS	3	READY MIX CONCRETE		2,728.50
890717	12167	13037	PANELS INC	23	SM FLASHINGS/PENTRATIONS		1,048.00
890719	71289	6337	SECO	11	RENT WORD PROCESSOR		64.17
890721	72189	6338	SECO	14	COMPUTER RENTAL/FOR SCHEDULING DEPT		1,500.00
890721	007041532	13242	CONTROL EQ	23	REPLACEMENT PARTS-PRESS. GA.		395.87
890724	693593	4029	GRAYBAR ELECTRIC	6	YARD LIGHTS		1,975.00
890725	694410	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		1,075.03
890725	STMT	6137	UTAH INTERNATIONAL	10	TAILINGS		13,740.00
890725	2001302	9046	WECOC/MAC TECH	15	PUMP-SPARE PARTS		4,543.30
890727	45226	10940	PROTOCOL	21	RADIO RENTALS		300.00
890727	45227	10940	PROTOCOL	21	RADIO RENTALS		300.00
890727	693597	13307	THERMETRICS	23	REPLACEMENT ELEMENT		646.53
890728	10127	9050	WECOC/CRISP AUTOMATION	15	SPARE PARTS		15,910.00
890728	14730	13143	COLO WIRE & CABLE	28	CABLE-UNDER GROUND LIGHTING		3,735.70
890728	706565	13057	MCMASTER CARR	23	LATCH, BUILDING		387.36
890728	DW727	12000	ACOM RENTALS	22	RADIO RENTALS		(10.00)
890731	CK5411/RE13	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		1,170.40
890731	CK5411/RE11	1000	CURTIS STEEL CO	1	REBAR/CONCRETE REINFORCEMENT		61.36
890731	693593	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		1,098.00
890731	25136	10464	GLENH'S SCAFFOLDING	13	LEASE SCAFFOLDING EQUIP		851.20
890731	64	12026	INSULATION DISTRIBUTORS	22	PIN WELDER RENTAL		1,200.00
890731	703013731	13334	UNISEAL	23	TEFLON SHEETS, BUILDINGS		1,663.12
890731	422699	13230	RYAN HERCO	29	FLOAT VALVE-HCL STORAGE TANK		302.09
890731	107153	13233	VAN LONDON CO.	29	REPLACEMENT X-MITTER		1,300.00
890731	6706	13233	RUST AUTOMATION	29	REPLACEMENT HANDLES-B TRAIN		290.88
890731	13223	13229	DEES SPIRAL	29	PIPE- BOILER BLDG EXHAUST		355.70
890800	CK 5569	7013	WESTERN ROCK PRODUCTS	3	DEMOR. BATCH PLANT		12,000.00
890800	CK 5746	7013	WESTERN ROCK PRODUCTS	3	READY MIX CONCRETE		1,333.75
890801	13521	13263	MATERIAL CONTROL	29	EMERGENCY LIGHT		1,733.00
890802	DW354	12000	ACOM RENTALS	22	RADIO RENTALS		(330.00)
890802	7637	13151	YEARGIN CONST	28	SAFETY GLASSES		550.00
890802	23944	13162	INTERSTATE SAFETY	28	EMERGENCY WASH/SHOWER		603.00
890804	73955	13372	MEYER MACH	29	REPLACEMENT FOR BROKEN BUCKETS		752.50
890809	700490	4034	GRAYBAR ELECTRIC	6	LIGHTING FIXTURES		205.05
890809	13537	13282	PROTOCOL	21	RADIO RENTALS		420.00

Yeargin

DIVISION



PURCHASE ORDER

PAGE NO 1 of 2	DATE 6/5/89	REQUISITION 3857	ACCOUNT 0000H76000	RELEASE NO.	ORDER NO. 10940-797
-------------------	----------------	---------------------	-----------------------	-------------	------------------------

SHIPMENT PROMISED 5/10/89 REQUIRED AT DESTINATION 5/10/89

F.O.B. Destination TERMS Net 30

Protocol
2210 Wilshire Blvd. 764
Santa Monica, CA 90403
Attn: Tony Miranda

Phone: (213) 452-9094

INVOICING: MAIL ORIGINAL AND
COPIES WITH ORIGINAL SHIPPING DOCUMENTS TO YEARGIN, INC./
PCC DIVISION.

P. O. Box 126
Cedar City, UT 84720
Attn: Bob English

SHIPPING CHARGES TO BE SHOWN SEPARATELY.
THIS ORDER IS SUBJECT TO THE TERMS, CONDITIONS AND
SPECIFICATIONS STATED HEREIN AND ATTACHED.

CONSIGN TO: YEARGIN INC./WESTERN OPERATION

ROUTE VIA: Best

SUPPLEMENTS VENDOR MUST CHECK EACH REVISION AND COMPLY WITH ALL CHANGES.

SUPP. NO	DATE
#1	6/15/89

Increase Radio by 4, Increase Charger by 4, Increase
NTE \$900.00

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE
------	----------	------	-------------	------------

RENTAL

- | | | | | |
|---|--------------------|-----|--|-----------|
| 1 | 49 ⁴⁵ Ⓢ | EA | Radio, Motorola HT440 | 75.00/mo. |
| | | | Includes: | |
| | 10Ⓢ | EA | Charger, 6-Pack | |
| | 9 | EA | Charger, Single-Pack | |
| | 10 | EA | Battery - Extra | |
| | 20 | EA | Handmikes | |
| 2 | 1 | LOT | Charge, UPS-Blue - In 15.00 FX
UPS-Ground - Out | |

Purchase Order Terms and Conditions C3/ 1 attached.

INTENDED USE

APPROX TVO \$11,900

BUYER: YEARGIN, INC. PCC DIVISION

BY

DIRECT CORRESPONDENCE TO:
BOX

IMPORTANT: ORDER AND ACCOUNT
NUMBERS MUST APPEAR ON ALL IN-
VOICES AND SHIPPING DOCUMENTS.
PACKAGES AND CORRESPONDENCE.

WILSHIRE, INC.
 801 PROJEKT
 P.O. BOX 6509
 GREENVILLE, S.C. 29606

NUMBER 12 1240

DATE

08/28/89

PAY

THREE THOUSAND SIX HUNDRED SEVENTY FIVE DOLLARS AND
 NO CENTS

****3675.

TO
 THE
 ORDER
 OF

PROTOCOL
 2210 WILSHIRE BLVD 764

SANTA MONICA CA 90403

Handwritten Signature
 NEGOTIABLE

WILSHIRE, INC.

DETACH AND RETAIN

1110 1ST

PO BOX 6509

GREENVILLE, S.C. 29606

NO RECEIPT REQUIRED

THE ATTACHED CHECK IS IN FULL PAYMENT OF ITEMS LISTED BELOW IF INCORRECT RETURN STATEMENT AND CHECK INTACT

P.O. NO	INVOICE NUMBER	DATE	AMOUNT	RETAINED AMOUNT	OTHER	NET
PO-10940	46226	08/28/89	3375.00	0.00	0.00	3375.00
PO-10940	46227	08/28/89	300.00	0.00	0.00	300.00

DISTRIBUTION					DISTRIBUTION				
ACCOUNT	DETAIL	✓	AMOUNT	✓	ACCOUNT	DETAIL	✓	AMOUNT	✓
0000H76000 M			3675.00						
COMPILED BY		AUDITED BY		APPROVED BY		ENTERED ON REGISTER BY		POSTED TO SUBSIDIARY LEDGER	

PROTOCOL

TELECOMMUNICATIONS, INC.

[213] 452-9094

BILLING PERIOD
JUL 10-AUG 09 1989

INVOICE DATE
JUL 27 1989

ACCOUNT NUMBER
23365

INVOICE NO.
46226

ACCOUNTS PAYABLE
YEARGIN CONSTRUCTION INC.
BOX 126
CEDAR CITY, UTAH 84720
ATTN: BOB ENGLISH

7 31.89

SHIP TO:
MIKE DENKERS/YEARGIN CONSTR.
17.3 MILES WEST OF CEDAR CITY
CEDAR CITY, UTAH 84720
PROJECT: " WEDCO "

RENT

TERMS: N 30 DAYS PREP BY: MIKE DENKERS PO#: **10940-797** EXTENDED

3 MOTOROLA HT440 HANDIE TALKIES @ \$75.00 EACH MONTHLY
JUL 10 THROUGH AUG 09 1989 MONTHLY RENTAL

\$ 3,375.00

INVOICE APPROVAL	
VENDOR	30029
PO#	10940
INVOICE	46226
DATE	7/27
TIME	8/28
AMOUNT	1126000
TOTAL	3375.00
DISC	
TAX	
FRI	
APPROVED	E
	3375.00
	F4856

EASE REMIT TO:

OTOCOL TELECOMMUNICATIONS, INC.
10 WILSHIRE BOULEVARD SUITE 764
NTA MONICA, CALIFORNIA. 90403

INVOICE TOTAL

EXHIBIT A

R. GLEN WOODS #4447
4746 South 900 East, Suite 210
Salt Lake City, UT 84117
Attorney for Petitioners

Address for Notices and Correspondence:
3770 Howard Hughes Parkway, Suite 300
Las Vegas, NV 89109
Telephone: (702) 794-4504

JAN GRAHAM #1231
Attorney General
GALE K. FRANCIS #4213
Assistant Attorney General
Attorneys for Respondent
50 South Main, Suite 900
Salt Lake City, UT 84144
Telephone: (801) 536-8200

RECEIVED
MAY 05 1994
APPEALS SECTION
STATE TAX COMMISSION

BEFORE THE UTAH STATE TAX COMMISSION

STANDARD INDUSTRIAL STRUCTURES
CORPORATION,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

JOINT STIPULATION OF
FACTS

Case No. 92-1400

Account No. D67742

Tax Type: Sales and Use

ST. GEORGE STEEL FABRICATION,
INC.,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

Case No. 92-1775

Account No. C33761

Tax Type: Sales and Use

YEARGIN, INC. AND WESTERN
ELECTROCHEMICAL COMPANY

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

Case No. 93-0002

Account No. H-02516

Tax Type: Sales and Use

COME NOW the parties, by and through their respective counsel of record, and hereby stipulate that the following facts shall be taken as true for purposes of the cases captioned above:

Parties and Background

1. Petitioner Standard Industrial Structures Corporation ("Standard Industrial") was all times relevant hereto a corporation organized and existing and in good standing under the laws of the State of Texas and was duly qualified to transact business and in good standing as a foreign corporation under the laws of the State of Utah. Petitioner Standard Industrial Structures Corporation was a registered retailer in the State of Utah.

2. Petitioner St. George Steel Fabrication, Inc. ("St. George Steel") was at all times relevant hereto a corporation organized and existing and in good standing under the laws of the State of Utah. Petitioner St. George Steel was a registered retailer in the State of Utah.

3. Petitioner Yeargin, Inc. ("Yeargin") was at all times relevant hereto a corporation organized and existing and in good standing under the laws of the State of Delaware and was duly qualified to transact business and in good standing as a foreign corporation under the laws of the State of Utah.

4. Petitioner Western Electrochemical Company ("WECCO") was at all times relevant hereto a corporation organized and existing and in good standing under the laws of the State of Delaware and was duly qualified to transact business and in good standing as a foreign corporation under the laws of the State of Utah.

5. WECCO is a wholly owned subsidiary of Pacific Engineering & Production Co. of Nevada ("PEPCON") which, prior to May 4, 1988, operated an ammonium perchlorate ("AP") manufacturing facility in Clark County, Nevada. Prior to May 4, 1988 PEPCON was one of two domestic producers of AP. AP is a chemical that is essential to a variety of national defense and space exploration programs.

6. On May 4, 1988 a series of fires and explosions at the PEPCON AP manufacturing facility resulted in the total destruction of PEPCON's facility and the loss of approximately half of United States domestic AP production capacity.

7. After the May 4, 1988 fires and explosions the United States Department of Defense (the "DOD") and the National Aeronautics and Space Administration ("NASA") determined that it was essential to national security and space exploration that the Nation's AP production capacity be replaced as soon as possible.

8. After the May 4, 1988 fires and explosions PEPCON lacked sufficient funds with which to re-build or replace its AP manufacturing facility, and was unable to obtain conventional financing for this purpose. In order to expedite the replenishment of the Nation's AP production capacity, contractors of NASA and the DOD made certain financing available to Pepcon Production, Inc. ("PPI"), an affiliate of PEPCON. The terms of the financing prohibited the expenditure of the loaned funds to purchase "nonseverable" property, or real property.

9. The financing made available by contractors of NASA and the DOD was the sole source of construction funds for the AP facility until permanent financing was obtained, in March, 1989.

10. It was not possible to rebuild the AP manufacturing facility on the site that had been occupied by the PEPCON manufacturing facility. After a brief but intensive search a suitable site was located in Iron County, Utah, approximately 15 miles West of Cedar City. PPI purchased the site with its own funds because real property was not a permissible use of the construction funds. Construction began at the Iron County site in July, 1988 and proceeded under the terms of a DOD priority rating, pursuant to the provisions of the Defense Priority and Allocation System regulation (15 C.F.R. 350).

11. During construction a search for permanent financing continued. When construction was nearly complete permanent financing was obtained from Security Pacific Bank Washington, N.A. The permanent financing was closed on March 3, 1989. On that date the lender required that PEPCON form WECCO for the purpose of completing the construction of the facility and thereafter operating the facility. WECCO then succeeded PPI as the owner of the AP facility under construction. Initial production of AP at the new WECCO AP manufacturing facility occurred in August, 1989.

12. During the course of construction of the facility PPI and WECCO entered into an agreement with United Engineers & Constructors, Inc. and its affiliate, Yeargin, for the purpose of providing assistance in the engineering, design and procurement for the construction of the AP manufacturing facility. United Engineers assisted WECCO in purchasing materials for use in the construction of the facility and located suppliers, obtained price quotations and arranged for WECCO to make purchases of materials. Title to all materials purchased for use at the WECCO facility passed directly to WECCO from the suppliers.

WECCO AP Production Facility

13. AP is produced at the WECCO facility by electrochemical processes using WECCO's proprietary technology. The principal raw materials used in the manufacture of AP are electrical energy, salt, ammonia and hydrochloric acid. The AP manufacturing process begins with the electrolytic oxidation of sodium chloride to produce sodium chlorate. The sodium chlorate is then subjected to electrolytic oxidation to produce sodium perchlorate, which is stored for AP production. Concurrently, hydrochloric acid is combined in a reactor vessel with anhydrous ammonia to form ammonium chloride. The ammonium chloride is then combined with sodium perchlorate in a crystallizer to produce desired quantities of AP having the desired characteristics. The crystallization process is controlled to yield the particle size, particle shape, and particle size distribution desired. Process variables include duration, temperatures and process rates.

14. The crystallization process occurs in discrete batches, permitting AP to be tailored to individual specifications of WECCO's customers. When the crystallization is complete, the AP is stored in specially selected containers. The AP is then specially blended with other batches to produce homogenous lots that conform to customer specifications.

15. Finished and blended AP is shipped in 30-gallon drums or in 5,000-pound bins that are owned and furnished by customers. A by-product of the AP production process, the liquid from which the AP is crystallized, is subjected to additional processing, yielding salt and AP. The salt is recycled through the manufacturing process.

16. Products produced at the WECCO facility in addition to standard grades of AP include special grades of AP, anhydrous sodium perchlorate and sodium perchlorate solution, which is sold for use in explosive formulations, and potassium perchlorate and other perchlorate chemicals.

17. The WECCO manufacturing facility includes a laboratory building and an administration building, which constitute permanent improvements to realty. The laboratory and administration buildings are assessed and taxed by the Iron County Assessor as real property. Applicable sales and use taxes were duly paid with respect to materials used in the construction of the laboratory and administration buildings.

18. The WECCO manufacturing facility also includes approximately 16 steel structures some of which house particular items of manufacturing equipment. By agreement between WECCO, the Iron County Assessor and representatives of the Utah State Tax Commission these structures have been treated for property tax purposes as personal property, and have been taxed to WECCO as personal property each year since those structures were acquired.

Standard Industrial Structures Corporation

19. Standard Industrial Structures Corporation contracted with WECCO through United Engineers to supply materials and field erection for sixteen (16) specially designed pre-engineered steel buildings at the WECCO facility. Requirements for the steel were specified by United Engineers. Foundations were designed and provided by others. Standard Industrial charged separate prices for materials, fabrication and shipping, and for field erection.

20. The steel structures provided by Standard Industrial were designed to contain particular items of manufacturing equipment. In each case the cost or value of the steel structure is relatively small when compared to the cost or value of the equipment contained therein.

21. Work by Standard Industrial under the terms of the contract commenced October 21, 1988. Standard Industrial subsequently manufactured the materials for the steel structures and shipped and sold those materials to WECCO. Title to materials sold to WECCO passed to WECCO at the time the materials were delivered to WECCO's facility.

22. Each of the steel structures is attached to a concrete foundation by means of a series of nuts and bolts. The parts of the structures are similarly bolted together. The steel structures may be taken down, moved and re-erected at other locations when necessary without damage to the structures, and without diminishing their economic values or utility.

23. Acting on behalf of PPI and WECCO, Yeargin furnished to Standard Industrial an exemption certificate to the effect that the materials sold by Standard Industrial were for use in new or expanding operations in a Utah manufacturing facility. Standard Industrial did not charge or collect sales taxes on the materials it sold to WECCO.

St. George Steel Fabrication, Inc.

24. St. George Steel contracted with WECCO through Yeargin to supply materials and field erection for certain steel tanks at the WECCO facility. Specifications for the steel tanks were provided by United Engineers. St. George Steel charged a separate price in the case of each tank for materials, fabrication and shipping, and for field erection.

25. Much of the AP production process involves the handling of liquids. The steel tanks provided by St. George Steel were designed to contain various in-process liquids at various points in the manufacturing process. Those liquids include anhydrous ammonia, sodium chlorate and sodium perchlorate in solution, ammonium perchlorate in solution, salt in solution, hydrochloric acid and water. The steel tanks provided by St. George Steel are also used to combine and mix liquids during the manufacturing process.

26. In some cases the steel tanks supplied by St. George Steel were trucked to the WECCO site where they were then lifted off the trucks with a crane and set on concrete pads. In other cases the tanks were delivered to the site in sections, generally halves, which were then welded together at the WECCO site.

27. Each of the steel tanks sits without fasteners on a concrete pad or on concrete piers. The tanks are not attached to the pads or piers or in other fashion permanently attached other than by connection to piping and grounding devices to real property.

28. Acting on behalf of PPI and WECCO, Yeargin furnished to St. George Steel an exemption certificate to the effect that the materials sold by St. George Steel were for use in new or expanding operations in a Utah Manufacturing Facility. St. George Steel did not charge or collect sales taxes on the materials it sold to WECCO.

Yeargin, Inc. and Western Electrochemical Company

29. The raw materials used by WECCO to produce AP include anhydrous ammonia and hydrochloric acid. These raw materials typically arrive at the WECCO facility in railroad cars. The facility includes specially designed equipment for the unloading and processing of these raw materials. The raw materials are unloaded and conducted into tanks from which they are in turn conducted to other process vessels for use in the manufacture of AP.

30. The WECCO facility includes one 750,000 gallon water tank. Water for the tank is pumped from WECCO's well. Approximately 50 percent of the capacity of this tank is used for process water, and approximately 50 percent is reserved for fire protection for the facility.

31. Propane and natural gas are used at the WECCO facility to produce steam during the production process.

32. Containers owned by WECCO are used to hold AP that has been crystallized in discrete batches and is in the drying and blending processes. WECCO acquired bar code application and reading apparatus to assist in inventory control of batches and blends.

Physical Layout of WECCO Facility

33. Attached to this Stipulation of Facts and incorporated herein by reference as Exhibit "A" is a schematic map of the WECCO AP manufacturing facility. For purposes of

identification, certain structures have been identified by number designation and some by alphabetical designation.

34. Those structures identified with numbers 1 through 6 are identified with the Yeargin audit report. Specifically, structures 1 through 6 are referenced in Schedule 1 of the Yeargin audit report dated 9-17-92. The specific references are as follows:

a. Structure number 1 consists of three metal buildings, which are identified with invoice number 2270 on page 1/14 of the Yeargin audit report.

b. Structure number 2 is the water tank referred to in Paragraph 30 hereof and is associated with invoice number 32629 identified on page 4/14 of Schedule 1 to the Yeargin audit report.

c. Item 3 consists of three propane tanks, which are associated with the following pages and invoices on Schedule 1 of the Yeargin audit: page 5, invoice number 4692; page 7, invoices 4702, 4704 and 4705; page 8, invoices 4708, 4709 and 4711; page 12, invoices 4747 and 4752; and on page 14, invoice 4783.

d. Item 4 consists of four HCL tanks, which are associated with the following pages and invoices of Schedule 1 of the Yeargin audit: page 7, invoices 3014, 3041 and 3042; and page 8, invoices 3062 and 3898.

e. Item 5 consists of two ammonia tanks, which are associated with page 8/14, invoice 22245 of Schedule 1 to the Yeargin audit report.

f. Item 6 consists of four HCL and ammonia towers, which are associated with page 9/14, invoice 4718 of Schedule 1 to the Yeargin audit report.

35. Items identified by alphabetical designations A through P are steel structures associated with the Standard Industrial audit report. These structures are common in their construction materials and appearance and are referred to in Schedule 1 to the Standard Industrial Structures audit report as follows:

a. Item "A" is the anode building and is referred to on page 1/7 of the Standard Industrial audit report.

b. Item "B" is the cell house building and is referred to on page 1/7 of the Standard Industrial audit report.

c. Item "C" is the crystallization/dryer train A building and is referred to on page 1-2/7 of the Standard Industrial audit report.

d. Item "D" is the crystallization/dryer train B building and is referred to on page 2/7 of the Standard Industrial audit report.

e. Item "E" is the chiller building and is referred to on page 2/7 of the Standard Industrial audit report.

f. Item "F" is the boiler building and is referred to on page 3/7 of the Standard Industrial audit report.

g. Item "G" is the batch dryer building and is referred to on page 3/7 of the Standard Industrial audit report.

h. Item "H" is the blender B building and is referred to on page 3/7 of the Standard Industrial audit report.

i. Item "I" is the blender A building and is referred to on pages 3-4/7 of the Standard Industrial audit report.

j. Item "J" is the salt crystallizer building and is referred to on page 4/7 of the Standard Industrial audit report.

k. Item "K" is the warehouse building and is referred to on page 4/7 of the Standard Industrial audit report.

l. Item "L" is the TCP/desiccant building and is referred to on page 5/7 of the Standard Industrial audit report.

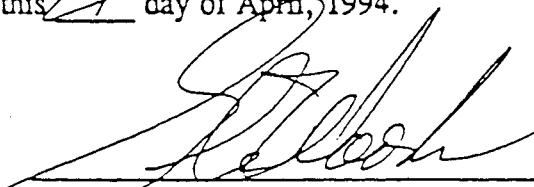
m. Item "M" is the plant monitoring building and is referred to on page 5/7 of the Standard Industrial audit report.

n. Item "N" is the samples building and is referred to on page 5/7 of the Standard Industrial audit report.

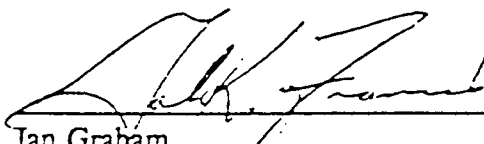
o. Item "O" is the vehicle maintenance building and is referred to on page 6/7 of the Standard Industrial audit report.

p. Item "P" is the pumphouse and is referred to on page 6/7 of the Standard Industrial audit report.

RESPECTFULLY SUBMITTED this 29th day of April, 1994.



R. Glen Woods
Attorney for Petitioners



Jan Graham
Gale K. Francis
Attorneys for Respondent

Tab 4

UTAH STATE TAX COMMISSION, STATE OF UTAH

-o0o-

YEARGIN INC. & WESTERN)	
ELECTROCHEMICAL,)	
	)	Utah Supreme Court
Plaintiff,	)	970530
)	
vs.	)	Tax Commission Appeal
	)	No. 93-0002
UTAH STATE TAX COMMISSION,)	
	)	Third District Court No.
Defendant.	)	970903133CV

-o0o-

BE IT REMEMBERED that on the 13th day of March, 1997, commencing at the hour of 9:30 a.m., the above-entitled matter came on for hearing before the HONORABLE G. BLAINE DAVIS, sitting as Judge in the above-named Court for the purpose of this cause, and that the following proceedings were had.

-o0o-



A P P E A R A N C E S

For the Plaintiff: ROBERT A. PETERSON
 Attorney at Law
 Giaugue, Crockett, Bendinger &
 Peterson
 170 South Main Street
 Suite 400
 Salt Lake City, Utah 84101

For the Defendant: GALE K. FRANCIS
 Assistant Attorney General
 50 South Main, #900
 Salt Lake City, Utah 84144

* * *

	<u>Page</u>
OPENING STATEMENT BY MR. PETERSON	5
OPENING STATEMENT BY MR. FRANCIS	7
WITNESSES FOR THE PETITIONER	
BILL BURKE	
Direct Examination by Mr. Peterson	14
Cross-Examination by Mr. Francis	29
Redirect Examination by Mr. Peterson	59
Recross-Examination by Mr. Francis	60
Further Redirect Examination by Mr. Peterson	61
C. KEITH ROOKER	
Direct Examination by Mr. Peterson	65
Cross-Examination by Mr. Francis	76
Redirect Examination by Mr. Peterson	78
PETITIONER RESTS	79

*

Page

WITNESS FOR THE RESPONDENT

RON JACOBSEN

Direct Examination by Mr. Francis	80
Cross-Examination by Mr. Peterson	106
Redirect Examination by Mr. Francis	110
Recross-Examination by Mr. Peterson	111
RESPONDENT RESTS	111

* * *

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Received</u>
Exhibit P-1	Contract	24
Exhibit P-2	Stipulation	24
Exhibit P-3	\$40,860 check	29
Exhibit P-4	\$67,827 check	29
Exhibit R-1	Audit Report	48
Exhibit R-2	Summary of Audit	48
Exhibit R-3	Sales Tax Returns	48
Exhibit R-4	Check	48
Exhibit R-5	Letter	48
Exhibit R-6	Subcontract	48
Exhibit R-7	Ledger	48
Exhibit R-8	Purchase order and checks	48

* * *

P R O C E E D I N G S

THE COURT: --Inc. vs. the Auditing Division. It's Appeal No. 93-0002, one of the first cases in 1993, so it's an old case. Glad to finally be at this point.

I'm Glen Davis, Administrative Law Judge.

Will each of you state your appearances and those with you, for the record?

Mr. Peterson, would you go first, please?

MR. PETERSON: Robert Peterson, representing Yeargin, Inc.

THE COURT: Okay. Would you identify those with you, please?

MR. PETERSON: Yes. With me today is Bill Burke, who was formerly with Yeargin, Inc. and its parent, United Construction & Engineering and will be a witness, and also Mr. C. Keith Rooker, who was, at pertinent times the president, I believe, was it, Keith, of (inaudible) Production, Inc. and--not president?

MR. ROOKER: Not president.

MR. PETERSON: Oh. I'm sorry.

MR. ROOKER: It doesn't matter.

THE COURT: Is Burke B-u-r-k-e?

MR. BURKE: Yes.

THE COURT:

Thank you.

1 Mr. Francis?

2 MR. FRANCIS: Gale Francis, Assistant Attorney
3 General. With me from the Auditing Division is Burt
4 Ashcroft, Ron Jacobson, Brad Simpson and Marie Humphries is
5 sitting in as well.

6 The only witness that I intend on calling is Mr.
7 Jacobson.

8 THE COURT: What was Ms. Humphries first name?

9 MR. FRANCIS: Marie.

10 THE COURT: Okay. How would you like to proceed in
11 this? As I indicated, it's the formal hearing. Do you
12 intend to make opening statements to begin or are there any
13 preliminary or procedural matters that we need to discuss
14 first?

15 MR. PETERSON: I wouldn't mind making about a one
16 or two-minute opening statement, if that would please you.

17 THE COURT: Okay. That would help the--I would
18 like to take just a moment that--to at least try to solidify
19 and centralize on the--on the issues of the case.

20 MR. PETERSON: That's--that would be the purpose of
21 my opening statement and I'm sure Mr. Francis' response.

22 THE COURT: Okay. Good. Thank you.

23 MR. PETERSON: Okay?

24 THE COURT: Go ahead, Mr. Peterson.

25 MR. PETERSON: Thank you, Judge Davis.

1 The situation as I understand it as of today is
2 this: My client, Yeargin, Inc., claims it is entitled to a
3 refund of some \$87,000, and although the evidence might
4 indicate that they're entitled to a refund of \$107,000.

5 As I understand the current position of the
6 Auditing Division, they don't claim that we owe any more
7 taxes, as was the case previously, but they do, I believe,
8 claim that we're not entitled to a refund and certainly not
9 in the amount that--as claimed.

10 I don't think it will take me more than a half an
11 hour to put on the evidence that I want to put on this case,
12 because essentially, we--we have a legal theory that--that is
13 not--that does--it is not actually intricate, so having said
14 that, I'll sit down.

15 THE COURT: Okay. Thank you.

16 And that--and that was one of my questions, because
17 in the original petition for redetermination and the amended
18 petition, it did--there was apparently some tax claim by the
19 auditing division and a refund.

20 Is his statement accurate, that there is no longer
21 a claim of additional taxes?

22 MR. FRANCIS: Yes. I think one of the exhibits
23 that we'll be entering shows that there's a zero balance owed
24 on the audit to date.

25 THE COURT: So this is substantially a claim for

1 refund case?

2 MR. FRANCIS: Yes. I would believe that that's
3 accurate.

4 The issue, as the respondent sees it, is should the
5 audit be sustained for sales tax on items of tangible
6 personal property purchased by the petitioner and installed
7 in the PEPCON or WECCO facility? We believe that that should
8 be concluded in the affirmative because the evidence will
9 show that the petitioner was the contractor in a furnish and
10 install contract with PEPCON, Inc., which later became WECCO,
11 Western Electric--Western Electrochemical Company.

12 The materials which were incorporated into that
13 facility, at least those within the audit were purchased by
14 Yeargin as a furnish and install contractor, they were
15 installed by Yeargin, and as a result, it became a relative
16 consumer and did owe tax on these items.

17 A great deal of effort went into the audit, the
18 audit period itself took almost a year-and-a-half, while
19 statements and schedules and documents were reviewed and
20 revised and the conclusion that we believe you should make is
21 that the audit should be sustained in its entirety, that the
22 amounts of tax were indeed due by this petitioner and ought
23 to be sustained.

24 THE COURT: Okay. When--when you say "audit", have
25 those amounts been paid? That is, was there an audit

1 performed and the amounts have been paid and that's why
2 there's a refund, or was the audit performed and adjusted and
3 now they think that based on what was agreed to, they're
4 entitled to a refund?

5 MR. FRANCIS: Prior to the audit report and the
6 statutory notice, items had been deleted from the initial
7 drafts, so--

8 THE COURT: Sure.

9 MR. FRANCIS: --from the point of the audit report,
10 I believe that the amounts were due, they have been paid and
11 it's from those amounts, I believe, that the petitioner is
12 seeking a refund.

13 THE COURT: Well, and that's what I'm--what I'm
14 trying to get to is, the amounts were assessed and paid?

15 MR. FRANCIS: Yes.

16 THE COURT: There were some adjustments in the
17 audit? That almost always occurs, but--

18 MR. FRANCIS: Right.

19 THE COURT: --but the amounts for which they're
20 asking refund are amounts which were paid as a result of an
21 audit; is that--

22 MR. FRANCIS: That's my understanding, yes.

23 THE COURT: --is that correct? Yes.

24 Okay. Well, it--it may make a difference on who
25 has the burden of proof, so--

1 MR. FRANCIS: Yes.

2 THE COURT: --so that's why. Is that your--

3 MR. FRANCIS: I think they all stem from the audit,
4 yes.

5 THE COURT: Okay. And--and specifically, what is
6 the legal issue? Is it--

7 MR. FRANCIS: Sure.

8 THE COURT: Is it a matter of manufacturer's
9 exemption or is it a matter of who installed the--the
10 tangible personal property into the real property? What--
11 what do each of you see as the key legal issue here?

12 MR. PETERSON: Your--the key legal issues as I see
13 it are two. The--my client was working on a very fast track
14 project because it was necessary to build this facility in
15 order to be able to produce ammonium--I think it's ammonium
16 perchlorate, which is essential to rocketry.

17 And it was essential that this be done immediately
18 because the prior plant had blown up and so my client did a
19 multiplicity of things for, initially, PEPCON and then WECCO;
20 but among the things it did was act as an agent to procure
21 materials and under its contract, quite clearly, when it so
22 acted, title to those materials was never in my client. It
23 didn't buy any, it didn't--it didn't purchase any taxable
24 property, never did, didn't have title to it.

25 This at one point, has been stipulated to among

1 all the parties and that's the second legal point, we think
2 that the stipulation entered into is dispositive of the fact
3 that we don't have any tax liability and we also think that
4 based upon the contracts and what we were doing, the
5 stipulation is dead right.

6 So, those--that's the issue as I see it. We--we
7 should not be subject to any tax liability 'cause we were
8 never in a position, acting on our own behalf, to give rise
9 to that liability. So that's where we stand.

10 THE COURT: So your position is, your client was
11 just acting as an agent in whatever it did?

12 MR. PETERSON: Yeah.

13 THE COURT: That the materials were purchased for
14 somebody else and--

15 MR. PETERSON: Right. PEPCON/slash/WECCO, which
16 has been thoroughly audited and paid whatever they owed.

17 THE COURT: Okay. Is that your interpretation of
18 the issues also, Mr. Francis?

19 MR. FRANCIS: Yes, I think it would be. I think
20 that would come under the umbrella of, is Yeargin, Inc. the
21 proper party to be assessed and to pay the tax liabilities?

22 THE COURT: Okay. So, one point of clarification,
23 it is not a manufacturer's exemption issue? It is a real
24 property installation issue?

25 MR. FRANCIS: I believe that's accurate.

1 MR. PETERSON: Right. WECCO had the manufacturer's
2 exemption.

3 There are also, if--if, God forbid we ever get into
4 it, I suppose, the question of--of adding up invoices and how
5 we get to these numbers, it would be--would be tortuous.

6 And--and one of the problems we have is--is since
7 1994, Yeargin thought it was, other than--other than as a
8 claimant of a refund, thought it was well out of this,
9 because of the fact that the stipulation and--and we're--
10 we're severely disadvantaged. Our employees are all over the
11 world now and the records are all over the place and we have
12 a real problem.

13 THE COURT: Okay. And that was in fact my next
14 question, is, there is apparently no dispute as to the
15 amount? That is, we're not going to be arguing over whether
16 an individual item was or was not subject to the taxes, it
17 all depends upon one legal theory, so that either the full
18 refund is due or none of the refund is due? Would that--
19 would that be accurate, or if not, why not?

20 MR. PETERSON: Well, all I can say on that point
21 is, we can't even--I--I don't know how they get to the zero
22 number. I--I--we have this new material that they've
23 presented to us today, which I'll look at it; I don't know
24 how they could possibly get to that, but we can't put on any
25 evidence because we just don't have the people and the

1 records anymore. So, that's the problem there.

2 THE COURT: Well,--well, but then you have the
3 burden of proof in this proceeding, and so I assume if you
4 have no evidence, you--you would agree that for purposes of
5 the proceeding, it's either, you either get the whole refund
6 or none of it?

7 You--you're not going to--

8 MR. PETERSON: Yeah. As of today, that's right.

9 THE COURT: Yeah. You're not going to try to
10 present evidence on an item by item by item basis?

11 MR. PETERSON: No.

12 THE COURT: Okay. Okay.

13 MR. PETERSON: Okay.

14 THE COURT: I think I understand it, in
15 generalities at least.

16 MR. PETERSON: Perhaps I do, too, now. Okay.

17 MR. FRANCIS: I would like to mention that we are
18 going to refer to some items, because we do have copies of
19 some documents and through the testimony of--of the
20 respondent's witness, we will try to show that, both by
21 contract and in fact, Yeargin was the purchaser of the goods,
22 so as long as we're aware that some of that is going to be
23 coming in.

24 MR. PETERSON: I presumed they would cross-examine
25 the witnesses.

1 THE COURT: Let me ask who's going to--are both of
2 your individuals going to be witnesses in this proceeding?

3 MR. PETERSON: Yeah. Yes, yes, they are, and I
4 would request--I'll put on Mr. Burke first and then Mr.
5 Rooker. When Mr. Rooker is done testifying, I would ask that
6 he be excused at this point, since he's here as an
7 accommodation and--and since we're not going to go invoice-
8 by-invoice.

9 THE COURT: Assuming there's no objection, I would
10 have no problem.

11 MR. PETERSON: After cross-examination, of course.

12 THE COURT: Yes.

13 Mr. Francis, who do you intend to call as
14 witnesses?

15 MR. FRANCIS: Ron Jacobson only.

16 THE COURT: Okay. Would Mr. Jacobson, Mr. Rooker
17 and Mr. Burke please stand and raise your rights hands and
18 we'll place you all under oath at this time.

19 (Whereupon, the prospective witnesses were duly
20 sworn by the Court.)

21 THE COURT: Thank you. The record may note that
22 all three of those individuals have been placed under oath.

23 Mr. Peterson, if you'd call your first witness.

24 MR. PETERSON: Yes. We'd call Mr. Burke.

25 THE COURT: Mr. Burke, if you'd take the witness

1 stand, please.

2 BILL BURKE,

3 called as a witness by and on behalf of the petitioner in
4 this matter, after having been previously duly sworn, assumed
5 the witness stand, and was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PETERSON:

8 Q Mr. Burke, were you previously affiliated with
9 Yeargin, Inc., the petitioner in this matter?

10 A Yes. From the period of time of August, 1988,
11 until March of 1994, I was in-house counsel in Denver,
12 Colorado, for a company called United Engineers &
13 Constructors, now called Rathion Engineers & Constructors,
14 and in that position, I did the legal work, in-house legal
15 work for all of the Denver-based or western region, which is
16 west of the Mississippi companies, that were within the
17 Rathion group, the affiliates. Yeargin, Inc. was one of
18 those companies and I did, over that period of time, quite a
19 bit of legal work for them.

20 Q Let me address your attention to the time frame
21 1988 to 1989, did you have any hand in the negotiation of
22 drafting of the contract by which United Engineers &
23 Constructors, the parent, entered into an agreement with
24 initially PEPCON Production?

25 A I came to United Engineers in Denver and my first

1 day of work was August 8th, 1988, 8-8-88, and I inherited the
2 contract that had just been completed, but was immediately
3 assigned to begin to work on the transaction that was in a
4 very fluid and complex state because of the rapid matters
5 which were occurring, the national security interests and
6 pressures that were being brought to bear and almost
7 immediately, I was in a series of negotiations with Mr.
8 Rooker, NASA, people from Morton-Thiokol, people from--
9 banking people, investment bankers, essentially beginning the
10 task of renegotiating that contract that resulted in a fairly
11 complex amendment some six months later.

12 Q Let me pass to you what--that which I'll ask to be
13 marked as Exhibit 1, ask if you can identify that document,
14 sir?

15 A Yes. This is a copy of my--shelf copy of what I
16 call the PEPCON contract which you'll note shows on the cover
17 my initials up at the top with the date of January 9th, 1989,
18 and a final review of March 3rd, 1989. That was on or about
19 the date, I believe in which the--yes, in which we signed the
20 fairly complex amendment that appears as the last 18 pages of
21 that document.

22 Q Now, one of the--one of the aspects of this
23 document is that there are numerous handwritten and pencil
24 written marks on this document, changes; what do those--do
25 those represent the final version of the contract or does

1 that represent something else?

2 A These are my marks and they are intended in the
3 body of the contract to indicate where the amendment--where
4 the changes that arose out of the amendment occur and
5 sometimes when they are too long, there's just a reference to
6 what section of the amendment one should go to. This was for
7 my own use as a copy that I kept as a work copy as I--as we
8 went through the transaction.

9 Q All right. Does this document then represent the
10 actual contractual agreement as amended--and as amended--

11 A Yes.

12 Q --between the parties?

13 A Yes.

14 Q All right. Now, I have marked with green tabs a
15 couple provisions of this contract, or actually one provision
16 both in the contract and the amendment. Perhaps you could be
17 so kind as to indicate the page number of the first one so
18 that the Judge and--

19 A Yes.

20 Q --counsel for the Auditing Division could know what
21 page we're looking at.

22 A Page 8 of the initial contract--

23 Q All right.

24 A --is marked.

25 Q Now on Page 8, there is a provision having to do

1 with the terms, does it--is there not?

2 A Yes. There is.

3 QQ And--and would you read that into the record, sir?

4 A Yeah. It's Section GC17, GC stands for general
5 conditions, it's a standard type of provision that's put into
6 many contracts that--that we do. It's entitled, Title to
7 Material and Equipment and states, Title to all material and
8 equipment procured by contractor to be incorporated into the
9 project shall pass to owner upon delivery to common carrier
10 or at the project site, whichever is provided for in the
11 purchase order.

12 Q All right. Now, let me--now, let me address your
13 attention to the second page that's marked on the amended
14 version and tell both the Judge and Counsel, if you will,
15 what page that is?

16 A That's also Page 8.

17 Q All right. And is that--is that--

18 A It's the same.

19 Q --provision the same?

20 A Exact same provision.

21 Q All right.

22 A There--there was never an amendment to that
23 provision.

24 Q All right. Now, you were the legal counsel--

25 A Yes.
Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
Machine-generated OCR, may contain errors.

1 Q --for the company, were you not?

2 A Yes.

3 Q Now, did--was that paragraph followed, in the sense
4 that did Yeargin, when it acted as a procurement agent, did
5 it purchase for its own account, materials? Or did it only
6 act as procurement agent and purchase--act as an agent in
7 purchasing materials which became the property of the client
8 upon delivery either to a common carrier or to the site?

9 A Well, taking into account that the project was
10 executed in Las Vegas and in Cedar City and I was in Denver,
11 my exposure to the procedure was, when people would call me
12 with legal problems of, How do we take care of this, I have
13 recollections of dealing with matters that are germane here
14 and matters that are germane to this issue from time to time,
15 in the sense that I have a recollection of doing what's
16 called a Seconding Agreement that took--

17 Q Well, since I, at least, have no idea what that
18 is--

19 A Well, that--it's--it's a borrowed servant--the
20 procedures, because we want to observe the--the contractual
21 niceties and--and--and to do things correctly, is that we, in
22 effect, took a purchasing person from United Engineers and
23 seconded him, placed him inside as a borrowed servant kind of
24 concept, into the Yeargin organization and gave him a power
25 of attorney for Yeargin so that he then could in turn act as

1 the purchasing agent on the--on the project as agent for
2 PEPCON, WECCO, as the various entities of--of the owner came
3 to pass.

4 Q Well, what mechanisms, if any, were brought to your
5 attention that would demonstrate that--other than the
6 contract itself, of course--that such a seconded person was
7 in fact purchasing as agent for PEPCON as opposed to
8 purchasing for Yeargin?

9 A That is routinely and customarily the way that it
10 is done. I have no recollection that this being any
11 different. I remember talking on the phone to the fellow a
12 couple times. The--because the issue--I will be very frank
13 about this and it's a very common practice in the industry,
14 in order to avoid the exposure to double taxation,
15 contractors are very careful to purchase as agent for someone
16 else, because if they don't, not only does the owner have to
17 pay a tax, but the--but the contractor has to pay a tax.

18 And so it is--it is common that that arrangement is
19 set up and is well understood by everyone and is routinely
20 executed in that manner.

21 Q To your knowledge, where did the funds come that
22 Yeargin, as a procurement agent, would use to purchase
23 materials that--to be delivered to these--

24 A The funds--I would be extremely surprised, because
25 of the way we conduct our business although the possibility

1 is always there, but the--the funds are--are someone else's
2 funds. In this case, my understanding and I'm thinking back
3 to the period of time when we were still negotiating with
4 NASA and we were negotiating with--with the bank in Seattle,
5 Rainier Bank that became Security Pacific, who eventually was
6 the--was the lender; the funds were coming from NASA, Morton-
7 Thiokol, there was some sort of letter of credit or something
8 from United Technologies, who was another user, along with
9 Morton-Thiokol of the ammonium perchlorate, and--and that
10 they were in effect, funding the project.

11 Q During the early stages of this--of this project
12 and given the emergency nature of it, was there a time when
13 the--the organization, administration of--of the contract was
14 a bit on the rough and tumble side?

15 A The organization, because of the fast track nature,
16 you--you must understand, the space shuttle exploded. All of
17 a sudden, there's a lot of uncertainties suddenly appearing
18 and therefore--and then this plant that--that was one of the
19 two producers, I think there was at least Kerr McGee, I think
20 also produced some, of the two producers in the United States
21 of an absolutely required fuel, suddenly blew up, exploded,
22 in Las Vegas.

23 Because this fuel is not only used in the space
24 shuttle, it's used in a lot of military rockets and missiles
25 for the U.S. Navy and other people there was tremendous

1 pressure placed on everyone to move as possible, and if you
2 could, in effect, double fast track a fast track job; fast
3 track meaning you're doing things simultaneously, you're
4 doing the engineering while you're simultaneously beginning
5 to--to start other activities and procurement, you're--you're
6 doing things so that there can be mistakes down the road, but
7 you realize that, but because of the speed required here, it
8 was very confused, it was a very confused set of negotiations
9 and meetings and that--that we got into.

10 Meanwhile, while we were consumed by trying to get
11 the financing in place and get it closed and at the same time
12 trying to keep NASA happy with its in effect edicts that it
13 kept issuing to--to speed up and quit all this dispute and
14 negotiation and just agree to everything and just go forward,
15 somewhere over here in the corner, the project's being
16 executed: the engineering is going forward, Yeargin is being
17 brought on board, people are being put into place within
18 Yeargin that--where they need to have holes filled and it
19 begins to do something and I'm--I'm traveling around, doing a
20 variety of things and simultaneously getting calls from
21 project people of various kinds that would have questions for
22 me.

23 Q Let me--you do recall, do you not, that there came
24 a time when there was some question raised as to the tax
25 liability of both Yeargin and by that time, WECCO; do you

1 recall anything?

2 A Yes, I do. I got a--and I don't remember who
3 called me but it was a couple of years after we were
4 finished, I think, and I got a call from someone who said
5 that the--we had relied on assurances given to us by some
6 Utah State bond authority who induced this project to come to
7 Utah and said, it'll be tax free, you can come to Utah and it
8 will all be tax free, no problem. So we did.

9 And everybody assumed that everything was tax
10 exempt and we kept getting assurances, yeah, don't worry
11 about it, it's all tax exempt and then, I guess the Tax
12 Commission--not unusually, took a somewhat different view
13 when they--when they became aware of the transaction and
14 said, no, we don't care what those guys over there said, this
15 is taxable, so we're just going to go forward.

16 And I--I remember something like somebody told me a
17 number initially that was very high, like a \$400,000
18 assessment or something. That's my recollection, I don't
19 think that turned out to be true, but that's a number that I
20 recall hearing somewhere early on, that it was a big problem.

21 Q Let--let me pass to you what I'd like marked as
22 Exhibit 2, which is a joint stipulation--

23 THE COURT: Let me just ask, I don't know that we
24 officially marked this. You did want this original agreement
25 marked as Exhibit 1?

1 MR. PETERSON: Yeah, I offer--I offer Exhibit 1 and
2 2, your Honor.

3 THE COURT: Any objections to Exhibits 1 and 2, Mr.
4 Francis?

5 MR. FRANCIS: Is Exhibit 1 purported to be the
6 accurate--a copy of the final contract? I mean, did the
7 final contract have the lined items in them and the pen
8 lines?

9 THE WITNESS: No. No, this is my work copy but
10 you'll notice it is--I marked on top of executed documents.
11 These documents are copies of the final contract and the
12 final amendment, the hand-marking is merely for my own
13 convenience, rather than go in and cut and paste the changes
14 and do a re-stated, this is sort of my version of an amended
15 and re-stated contract.

16 MR. PETERSON: Yeah, we claim nothing for the
17 handwriting.

18 THE WITNESS: No, I--I don't either, it's mine.

19 MR. PETERSON: It's the contract that we--that--

20 THE WITNESS: Yeah.

21 MR. PETERSON: --that is accurate--

22 MR. FRANCIS: I don't believe I have any objection
23 to--to 1.

24 If I can quickly look at Exhibit 2.

25 I don't have any exhibit to--or objection to

1 Exhibit 2 either.

2 Q (By Mr. Peterson) Mr. Burke, have you ever seen
3 Exhibit 2--

4 THE COURT: Exhibits 1 and 2 are received.

5 MR. PETERSON: Thank you, your Honor.

6 THE WITNESS: Okay. Thank you.

7 Yes. I had a copy of this in my file when I--I
8 went, after quite some period of time back to try to refresh
9 my memory on this transaction and--and I remember reading
10 this and I remember then having discussed it with Mr. Woods,
11 whose name you see at the very top of the first page, who was
12 our attorney.

13 Q (By Mr. Peterson) Yes, you anticipated my next
14 question.

15 A Yeah.

16 Q Who was Mr. Woods?

17 A He was the individual who be--through my approval
18 and--was assigned to represent us in this matter.

19 Q Did he represent anybody else?

20 A I believe that he represented the other petitioners
21 and I believe he also represented PEPCON/slash/WECCO, those
22 interests that were the owners' interests.

23 Q At the time that this stipulation was executed,
24 was--was Mr. Woods representing the--the interests of Yeargin
25 in this matter?

1 A Yes, he was.

2 Q All right. Let me address your attention to
3 Paragraph 12 of the stipulation, if you would, sir.

4 A Okay.

5 Q Would you read Section 12?

6 A During the course of construction of the facility,
7 PPI and WECCO entered into an agreement with United Engineers
8 & Constructors, Inc. and its affiliate, Yeargin, for the
9 purpose of providing assistance in the engineering, design
10 and procurement for the construction of the AP manufacturing
11 facility. United Engineers assisted WECCO in purchasing
12 materials for use in the construction of the facility and
13 located suppliers, obtained price quotations and arranged for
14 WECCO to make purchases of materials. Title to all materials
15 purchased for use at the WECCO facility passed directly to
16 WECCO from the suppliers.

17 Q Okay. Now, based upon your knowledge of what
18 occurred on this--on this project, is that--first of all, is
19 that an accurate statement?

20 A Yeah. I believe that it's accurate.

21 Q Now, following the time that the stipulation was
22 entered into, what, if anything, did Yeargin do in order to
23 subsequently protect its position in this litigation?

24 A I'm not sure what you mean. If you mean, did they
25 pay the assessment they did.

1 Q Oh, no the assessment, we'll get to the assessment
2 paying; but did--did--after the stipulation was--was entered
3 into, did Yeargin, on its behalf, take any efforts to, for
4 instance, get--get statements from its own witnesses, collect
5 records--

6 A No.

7 Q --do the sort of thing you need to to prepare for a
8 hearing?

9 A No. The--

10 Q Why?

11 A This stipulation, I--I may have reviewed it a few
12 times with Mr. Woods. At the time the--that it was being
13 worked out, there was then going to be, my recollection, a
14 settlement meeting of some kind that was going to shortly
15 follow. I quite frankly forgot about this, Yeargin forgot
16 about it, we'd already paid the money, it was a refund kind
17 of issue with us, Yeargin went off and did other things and I
18 went off and did other things and people, in effect, forgot
19 about it and the only person, when the money came in, would
20 be the--the accounting people who would take care of it.

21 Q Now, does the staff of Yeargin that was involved
22 with this project, do they still work for Yeargin?

23 A I think virtually every one in the Denver office is
24 gone from the company or somewhere else in the world. Some
25 of the people on Greenville, North Carolina, which is the

1 Yeargin headquarters, a few of those people are still around,
2 but their participation in these matters was minimal. It was
3 basically the--the person, the business person that I dealt
4 with for Yeargin who made the decisions for Yeargin from the
5 business standpoint and with whom I consulted, was a fellow
6 by the name of Roy Franch out of the Denver--he was a vice
7 president of Yeargin, out of the Denver office. He's no
8 longer with the company and I don't--I have no idea where he
9 is. He was in Houston for awhile and then he's disappeared.

10 Q Okay. Now, apparently, after the time of the
11 stipulation, as counsel for Yeargin, did you see any need to
12 maintain the ability to actively contest and litigate this
13 matter?

14 A No. There was no--there was an assumption that
15 this was--that it was going to be settled.

16 MR. PETERSON: I'd like marked as our next exhibit,
17 your Honor, two checks, one in the amount of \$67,827.86 and
18 the other in the amount of \$40,860.18.

19 THE COURT: I need to go off the record for about
20 30 seconds, I--I'm out of stickers to mark. I'll be right
21 back.

22 (Off the record.)

23 THE COURT: Okay. We're back on the record. I
24 have marked the one check in the amount of \$40,860 as Exhibit
25 No. 3 and the one in the amount of \$67,827. I've marked as

1 Exhibit No. 4.

2 MR. PETERSON: Oh. All right.

3 Q (By Mr. Peterson) Can you identify Exhibits 3 and
4 4, Mr. Burke?

5 A These are copies of documents I found in my file
6 pursuant to your request for evidence that we had actually
7 paid these taxes and when and where.

8 Q And to your knowledge, do--do Exhibits 3 and 4
9 represent in fact evidence that payments for sales taxes as
10 assessed were made from--by Yeargin?

11 A Yes. These were found in a--attached to a
12 document, which I was inquiring of the accounting people,
13 that very same question.

14 Q All right.

15 A Let--you know, some time ago and they faxed this to
16 me and said, well, here's copies of the checks.

17 Q Now, I suppose the obvious question is, given the
18 fact that Yeargin believed it was not purchasing except as
19 agent and thus owed no liability, why in the world did you
20 pay these assessments?

21 A To stop the interest running, basically. I mean,
22 Yeargin's a large company, the people make decisions based on
23 what they figure their economic interest is and the decision,
24 to the extent that I know what it was, was let's just stop
25 the interest running, let's just go ahead and pay these

1 things and--and claim a refund.

2 Q Okay.

3 MR. PETERSON: I have no further questions.

4 THE COURT: I assume you wanted to offer Exhibits 3
5 and 4?

6 MR. PETERSON: Yes.

7 THE COURT: Any objections, Mr. Francis?

8 MR. FRANCIS: No. No objections.

9 THE COURT: Exhibits 3 and 4 are received.

10 CROSS-EXAMINATION

11 BY MR. FRANCIS:

12 Q Mr. Burke, would you please turn to Petitioners'
13 Exhibit 1--

14 A Okay.

15 Q --the contract, Page 1 of that contract. And read
16 aloud Paragraph A(1) Definition of Work.

17 A Contractor shall perform as necessary for
18 completion of the project, the detailed design and
19 engineering, including preparation of plans, specifications,
20 construction drawings and estimates, shall procure, deliver
21 and install permanent materials and equipment, shall procure
22 and deliver construction equipment, supplies, tools, shall
23 provide supervisory services and labor and shall perform
24 changes, if any, pursuant to GC-3, all in accordance with the
25 terms of this agreement (the work).

1 Q And did Yeargin complete work in accordance with
2 that paragraph?

3 A Well, now let me make sure, because I don't think
4 Yeargin is a party to this particular document. This is the
5 prime contract.

6 And that there is a subcontract that existed
7 between, let's see, this is Page 2, this is the GC's. Yes,
8 this is--this is only a contract between--at this stage, this
9 is the one I inherited, between PEPCON Production, Inc. and
10 United Engineers & Constructors, Stearns Roger Division.
11 This is the, if you want, the prime contract.

12 Q And you're saying that Yeargin wasn't a party to
13 this contract then? What is the relationship between Yeargin
14 and United Engineers?

15 A Yeargin is the merit shop construction contracting
16 company.

17 Q And what--

18 A At that time, within the Rathion group, United
19 Engineers was the engineering services and procurement
20 services. United Engineers in effect did the services,
21 Yeargin did the construction.

22 And to the best of my recollection, I have a memory
23 of when these inter-affiliate transactions occur, there is a
24 standard form of inter-affiliate agreement because the people
25 do in fact account separately, they are accountable for

1 making profits and so there is an agreement, it's a small
2 one, but it--it has a scope of work attached to it and I have
3 a recollection of fairly, somewhere along the way, being
4 involved in getting that into place between Yeargin and
5 United Engineers.

6 Q So, we may have another agency contract existing
7 somewhere between Yeargin and United Engineers?

8 A It's not an agency contract. It is a construction-
9 -essentially, a construction services contract.

10 Q So, we're not looking at Yeargin's construction
11 services contract in Exhibit 1?

12 A No, you're not.

13 QQ So, we can't rely on it at all?

14 A For--for whatever you want to rely on, I don't
15 know; I can rely on it for a variety of things. It is in
16 fact the governing document for the relationship between the
17 owner and the prime contractor.

18 Q And Yeargin, for the prime contractor, provided the
19 construction services?

20 A Yes.

21 Q Is it your testimony then that Yeargin did not
22 purchase anything in accordance with this facility and this
23 prime contract?

24 A As I said, we moved into Yeargin, my recollection
25 is the procurement services were moved into Yeargin because

1 it was going to be closer to the owner, and we seconded in a
2 United Engineers procurement person into Yeargin and gave him
3 a Yeargin power of attorney, I remember negotiating that
4 power of attorney with the senior Yeargin executives in North
5 Carolina, so that he then could perform the functions that
6 United would have performed as procurement services from a
7 position within Yeargin.

8 Q So, Yeargin became a procurement division with an
9 assignee from United Engineers and could then conduct the
10 services that are explained in this contract?

11 A My guess, without looking at the scope of work of--
12 of the Yeargin contract, is that procurement services were
13 included. They didn't have any procurement people, because
14 they don't normally procure things, they--so they didn't have
15 anybody who knew how to do it, 'cause they didn't--they don't
16 buy things.

17 So, the natural thing was to go to United, they had
18 a large procurement division, if you will, it's a lot of
19 people, a room full, and say, we need to move someone who
20 knows something about procurement into Yeargin because the
21 need is to do that more or less, more or touch with the
22 owner, because the owner's involved in all of these things
23 and it's obviously his money and he needs to--we need to be
24 real close so that we don't screw up and buy something that--
25 that he didn't want to have

1 Q Do you recall the name of that individual?

2 A I think that that fellow's name is Dave Smith.

3 Q Would you explain, Mr. Burke, your participation in
4 the audit that is at question today?

5 A My participation was sitting in an office in Denver
6 and getting phone calls and reviewing drafts and--and reading
7 letters from Mr. Woods and--and other people and then getting
8 on the phone, writing letters back. That was the extent of
9 it.

10 Q All right. I'm going to, if I may--

11 A Uh huh.

12 Q --hand you a pack of documents, which the
13 respondent intends to submit as exhibits. They are in order
14 and separated by color sheets, Exhibits 1 through 8--

15 A Uh huh.

16 Q --have been stamped and identified--and they're now
17 identified as Respondent's exhibits. If you would turn to
18 the third exhibit in that packet, Exhibit No. 3?

19 A Uh huh.

20 Q Could you identify what the pages in that section
21 are?

22 A Well, I'm not sure I've got the right thing here,
23 because mine shows a check on top. Is that--is it this one
24 that you want the sales and use tax return?

25 Q Yes. That exhibit.

1 A Oh, okay. Exhibit 3? Yes, I have it.

2 Q Can you identify those documents are?

3 A No. I've never seen these documents.

4 Q Was it a regular responsibility of yours to review
5 Yeargin, Inc., 's sales tax returns filed in the states?

6 A No. We have a tax department in Philadelphia that
7 takes care of all tax matters.

8 Q Do you recognize any of the signatures at the
9 bottoms of these documents?

10 A I know Carl Byrd, I see his signature.

11 Q That is his signature?

12 A Uh huh.

13 Q Do you know Gary King?

14 A Gary King, I don't think I have dealt with.

15 Q Do you know Allison Brubeck?

16 A No.

17 Q (Inaudible)

18 A No. There's a Wilson--looks like a Wilson Burbank
19 or Burbash or something like that--oh, that's the Allison
20 lady again. I don't know.

21 Q I believe that's--

22 A Yeah. I don't know those people. The only person
23 there I know is Carl Byrd, he's a Yeargin V.P. in Greenville,
24 North Carolina.

25 Q Okay. And -- and do you recognize that as his

1 signature on a couple of those returns?

2 A Oh, not off the top of my head, but I mean, I have
3 no reason to believe it's not his signature. His signature
4 appears on the checks, so there could--you could compare and
5 it looks--it looks to me to be the same that's on the checks.

6 Q Thank you. Exhibit 1, the top of the packet of
7 documents that I just gave you--

8 A Uh huh.

9 Q --do you recognize that document? Have you seen
10 that?

11 A I have seen this document. This is--this--this was
12 the second, I think, notice that came through.

13 Q With the accompanying schedules, (inaudible)

14 A Yes. I've seen--that's right. Of the--the parts
15 that I have seen go down to the first colored tab, I believe,
16 and I think that's all I've seen.

17 Q Have you return to--before I get to that point; did
18 the petitioner, Yeargin, Inc., to your knowledge, pay sales
19 taxes to Utah in each quarter of the audit period?

20 A I have no knowledge at all about that, whether they
21 paid sales taxes or not. That would not have been anything I
22 would have--I mean the--the--these projects, Yeargin, as well
23 as the other affiliates, do projects not only in every state
24 of the Union, but all over the world. The tax people in
25 Philadelphia are responsible for setting up, getting the

1 proper permits and licenses for the construction activities
2 and are responsible for and monitoring and the making of the
3 appropriate tax returns and see that those are done.

4 Q But you have no personal knowledge?

5 A I have no personal knowledge.

6 Q If you would refer to Exhibit 4 in that packet.

7 A Okay.

8 Q (Inaudible)

9 A All right, yup.

10 Q I don't see where the stamp shows Exhibit 4.

11 A It's right here, I see it.

12 Q Okay. And then (inaudible) down?

13 A Uh huh.

14 Q Do you recognize that as a check from Yeargin?

15 A Uh huh.

16 Q Okay. And can you identify the itemized item on
17 the voucher that says P.O. 6148 and then ACCR Tax; do you
18 have any knowledge--

19 A Huh uh.

20 Q --as to what that entry would be?

21 A No. The--I would point out, although the timing
22 gets a little unusual, Yeargin was also doing some other
23 projects in Utah. They were doing something in Tooele, I
24 think, and then there was some sort of hazardous waste

25 disposal facility of some kind and the timing on these is a--

1 there may have been some overlap, I just don't remember; but
2 I don't have any idea why these--what these numbers mean--

3 Q Would you turn--

4 A --or even if they relate to this particular
5 project.

6 Q Would you turn to Page 2 of that exhibit?

7 A Okay.

8 Q Does this memorandum or item appear to be familiar
9 to you at all?

10 A No. The only thing that--I was looking at the
11 little box to see if I could tell which project it was and I--
12 -I don't recognize any of these. Or the vendor, no--I--no,
13 the answer is no, I don't know what this relates to.

14 Q If you will turn that page then,--

15 A Uh huh.

16 Q --and go to the next page and perhaps we can
17 identify the project involved with this check.

18 A Well, Stearns Catalytic--Stearns Catalytic--it says
19 PEPCON, I agree with that--

20 Q Uh huh.

21 A --but Stearns Catalytic is the name of the union
22 shop construction company. Why that appears there, I don't
23 know, but there was, because of the double breasting issue
24 that's faced by large engineering companies, there is an
25 effort, consciously and continuously made to keep the union

1 shop and the merit shop control officers accounting systems
2 totally separate. So, I don't know why Stearns Catalytic
3 appears here, other than this must be a document, I would
4 guess on that basis unless there's been a mistake and that
5 certainly can happen.

6 But I see this says the track system, which as Mr.
7 Rooker will confirm, he was extremely unhappy with because of
8 its accuracy and we wound up giving him a \$99,000 credit,
9 because of his complaints about the system that generated
10 this particular document. This could be a mistake or it
11 could be in fact, for whatever reason, something to do with
12 Stearns Catalytic, which I would not understand.

13 Q You--it is not normal course for Stearns Catalytic
14 or the union shop to purchase materials?

15 A It is not.

16 Q And by looking at the columns of items below that,
17 from there to the end of the document, do you have any
18 knowledge as to what the vouchers, voucher numbers would
19 refer to, the dates or purchase order numbers?

20 A No. I--I just see it says other dollars and it's
21 certainly not man hours 'cause that's zero and it's not labor
22 and it's not materials and it's not subcontractor dollars,
23 it's some other dollars, it says here.

24 Q And on the last page of that exhibit--

25 A Okay.

1 Q --about one-third of the way up the page--

2 A Okay. All right, yes. Well, I--yes, I'm--I'm with
3 you.

4 Q On the--on the--about a third of the way up the
5 page, it says total for account and has a number in the far
6 right column, has a total of \$30,339.64--

7 A Uh huh, yes.

8 Q --and if you turn to the first page of this
9 document, that appears to correspond with the second item on
10 the voucher memorandum, in amount, at least.

11 A Uh huh. It's exact same--it is the exact same
12 amount.

13 Q And the invoice number on that voucher on the first
14 page of Exhibit 4 says ACCR tax, but you don't know what that
15 means?

16 A Again--yeah, I don't understand--who--who was this
17 check cut on, what paper? This was a Yeargin check, with a
18 number coming from a Stearns Catalytic ledger, that I--which
19 I suspect is just one of the many mistakes of the track
20 system, but I don't know that. It could in fact be something
21 having to do with Stearns Catalytic, who did something for
22 Yeargin. I don't know.

23 Q Thank you. If you'll turn to the next exhibit,
24 Exhibit 5--

1 Q --there's a cover letter written by, I believe,
2 your counsel,--

3 A Yes.

4 Q --R. Glen (inaudible) on November 16th, 1994, to my
5 attention?

6 A Uh huh.

7 Q And behind that is copy that of course the
8 respondent--

9 A Uh huh.

10 Q --being a copy of the contract that was delivered
11 to us.

12 A Uh huh.

13 Q Have you had an opportunity to review either this
14 transmittal letter--

15 A No.

16 Q --or the contract attached?

17 A No. But--but this does appear to be, when I go to
18 the last page, this--this appears to be the initial contract,
19 un-handmarked by anyone.

20 Q Without your--

21 A Yeah, without my handwriting, yes.

22 Q Now, if you would turn to Exhibit 6, which is
23 immediately behind the contract.

24 A Exhibit 6. Okay. I'm there.

25 Q To the extent that you had familiarity with

1 agreements with the vendors--

2 A Uh huh.

3 Q --Yeargin, Inc., and I would assume this was after
4 they became a procurement agent for United Engineers--

5 A Uh huh.

6 Q --do you recognize this, the first page of Exhibit
7 6?

8 A Yes. This is a subcontract, as opposed to a
9 purchase order. This is a contract for services.

10 Q And would that have been entered into by Yeargin or
11 United Engineers or did it matter?

12 A Well, let me see. It says it's between Yeargin and
13 Western Rock Production Corporation and it's signed by
14 Yeargin and Western Rock Products Corp., so this is a
15 subcontract for services between Yeargin and this whatever
16 Western Rock Products is.

17 Q And following that contract, there's a copy of an
18 exemption certificate, I believe, are we on the same--

19 A Yes. I--I've seen this somewhere before, somewhere
20 in my file.

21 Q Do you recognize the signature there which is
22 supposed to be an authorized signature from Yeargin, Inc.?

23 A No, I don't. Sure doesn't look like David Smith.
24 I don't know who that is.

25 Q If Western Rock Products supplied rock products to

1 this construction site--

2 A Just one thing, though. I do notice, yeah, it's
3 the same person who signed as contractor under some--under
4 the subcontract, I--but I do not know who--I cannot read
5 that.

6 Q I can't either.

7 A Okay. I'm sorry, go ahead.

8 Q Do you know of any reason why Yeargin would issue
9 exemption certificates--

10 A I think because they--because they were told to do
11 so. My understanding, this is just based on my--during
12 negotiations with NASA and all kinds of lenders and
13 investment bankers and conversations we had with WECCO,
14 people, because the banks were obviously interested in the
15 same thing, it's a function of, if--if taxes are going to be
16 paid, in effect they're going to be made part of the loan and
17 you have to know that. It's not--you know, it's not off the
18 skin of Yeargin's teeth and the lenders just want to know, is
19 it going to be included in the loan or not, are we going to
20 have to pay it or not.

21 And my impression of the things I heard that were
22 said between the owner and the lenders and NASA was--was that
23 no, we were in effect told that if we would come to Utah, we
24 would get this benefit of these industrial bonds and that
25 there would be these tax exemptions available so that the

1 project costs would be lower and no, we don't need--we don't
2 need that money, 'cause it won't--you know, we won't be
3 paying taxes on this part of it.

4 I mean, everybody just assumed that what that
5 particular division of the State of Utah said was probably
6 right. That was the assumption.

7 Q And you--you really don't know why this exemption
8 was issued based--

9 A Yes. Yeargin--Yeargin was told to do it and
10 everyone was in effect told to do it, because they'd been
11 told that it was--that it was okay, from a--from an official
12 agency of the State of Utah who apparently hadn't checked
13 with another official agency of the State of Utah.

14 Q Would you turn to Exhibit 7?

15 A Yes.

16 Q Do you recognize the first page of that, that being
17 a--

18 A It's some sort of ledger from some--yeah, this was
19 like maybe some of the attachments or something that were on
20 some of the assessments or something, perhaps. It sort of
21 has that format.

22 Q Does this appear to be a--a form that was generated
23 by Yeargin, Inc. or by the audit--

24 A I don't know.

1 A I don't know the answer to that.

2 Q Okay.

3 A It says up--it says, sales and use tax audit,
4 Yeargin, Inc., but I don't know anything more than that. And
5 my exposure to this is, I think I saw something that looked
6 something like this attached to some of these assessments.

7 Q Would you turn to the second page of that--

8 A Okay.

9 Q --exhibit? Does that appear to be a check from
10 Yeargin, Inc. as well?

11 A As far as I can tell, it does. It's rather
12 difficult to read, but I believe that it is.

13 Q Now, turning to the next page, this appears to be
14 an invoice from Comfort Zone Systems to Yeargin, Inc.--

15 A Uh huh

16 Q --slash, PCC Division.

17 A Yeah.

18 Q And of course, believe that it's for the items that
19 were paid for by that check, but if you'd turn to the next
20 page.

21 A Yes. I've got--that brings up, PCC Division
22 reminds me of something, actually.

23 Q Would you explain that? Go ahead.

24 A PCC Division of Yeargin was an entity, was a

25 division of Yeargin that existed up in Idaho Falls and out of

1 that division, there was some procurement activity, I can't
2 remember a lot about it. The PCC Division came from a
3 company called Project Construction Company, which was an old
4 Stearns Roger company; but there was some small procurement
5 office out of the PCC office that was up in Idaho Falls, I
6 think, kind of unsophisticated, but--in kind of a--a back
7 water part of the company, if you will.

8 But go ahead, I'm sorry, I didn't mean to
9 interrupt, but when I saw PCC, I had not thought about them
10 in years because they're probably still up there in that back
11 water part of the world, doing whatever they do.

12 Q The next page.

13 A Yeah.

14 Q This appears to be a Yeargin purchase order.

15 A Uh huh.

16 Q And I guess that's a typical document that was used
17 for--

18 A I don't know, I'm not familiar with Yeargin
19 purchase order. I really am not. This appears to be a
20 Yeargin purchase order and it appears to be the kind of form
21 that would be used.

22 Q Do you recognize--

23 A I mean, usually there's some boilerplate on the
24 back and that kind of stuff.

25 Q Do you recognize the name of the signature of Mike

1 Deckers?

2 A Is that who that is? I did not, but--no, I don't
3 recognize the signature and had you not told me the name, I
4 would not have known.

5 Q And attached to that again is another exemption
6 certificate--

7 A Uh huh.

8 Q --that appears to be issued by Yeargin?

9 A Uh huh.

10 Q And next is a material requisition form?

11 A Uh huh.

12 Q Can you explain that, why it's on a United
13 Engineers' memo?

14 A No. I don't know why.

15 Who signed it? I can't tell who signed it.

16 And what's it for? I can't read this, but it's
17 something about exhaust system or something, for welding?

18 Q (Inaudible)

19 A Yeah, maybe it's for--maybe it's some--some
20 equipment that was needed--

21 Q Exhaust-- (inaudible)

22 A --because they were welding in a special place or
23 something like that. I don't know. It says shop and
24 something. I don't know.

25 Q Okay. And lastly, Exhibit 8.

1 A Okay.

2 Q Again, we have a cover sheet which is either
3 Yeargin, Inc, or Auditing Division--

4 AA Yes.

5 Q --cover sheet?

6 A Yes.

7 Q Under that is another purchase order--

8 A Yes.

9 Q --from Yeargin to Protocol?

10 A Uh huh.

11 Q Underneath that another check voucher for \$3,675--

12 A Uh huh.

13 Q --from Yeargin to Protocol?

14 And underneath that, a Protocol invoice apparently
15 to Yeargin; do those appear to be correct?

16 A Yes.

17 MR. FRANCIS: (Inaudible) through all of these
18 exhibits, may I ask objections of Counsel on any or all of
19 the exhibits that are in this packet?

20 MR. PETERSON: No, we don't object.

21 MR. FRANCIS: I would move that Respondent's
22 Exhibits 1 through 8 be received.

23 THE COURT: I don't have them, don't have them
24 marked.

25 MR. FRANCIS: I'll give you a packet (inaudible)

1 THE COURT: With no objection, Respondent's
2 Exhibits 1 through 8 are received.

3 MR. FRANCIS: I apologize for not giving them to
4 you before to review as we went through those items,--

5 THE COURT: Didn't have--

6 MR. FRANCIS: --but they had not--perhaps I should
7 have offered them, but at any rate--

8 Q (By Mr. Francis) Mr. Burke, do you know how
9 Yeargin accounted for the items that were included in the
10 audit and in particular, those items that we've seen in
11 Exhibits 6 through 8 on their books and records?

12 A The only matters I'm familiar with is that when
13 Yeargin paid the assessments rather than contest them
14 immediately, they turned around and billed United Engineers
15 under their subcontract and were, I believe, paid by United
16 Engineers, who then assumed the liability for that, from
17 inter-corporate transaction.

18 Q Would it have been more appropriate if these items
19 indeed were to have been--to PEPCON and/or WECCO,--

20 A You mean the things that are--

21 Q --that they flow through to the books of PEPCON and
22 WECCO?

23 A You mean the things like the walkie-talkies and the
24 welders, tents and--

25 Q And the items from Western Rock Products?

1 A Yeah.

2 Q Yes.

3 A I don't--I don't have an opinion about what's
4 appropriate. My understanding was that all of the--all of
5 the money for this was coming, not from Yeargin, they weren't
6 spending their own money, but was coming from accounts that
7 were--or that there--where the costs were being borne by
8 ultimately NASA or the bank. We weren't--we were not funding
9 this project.

10 Q And the purchases that were made by Yeargin--

11 A Uh huh.

12 Q --from various vendors, was there a disclosure to
13 those vendors that there was an undisclosed principal
14 somewhere else, through an agency?

15 A I have no idea, but I--I don't doubt that the
16 vendors were familiar with the project, but I don't--

17 Q You don't know?

18 A --I don't know if anybody said, I'd like to
19 disclose to you an undisclosed principal. I doubt that--I
20 doubt very seriously if that occurred.

21 Q And you're not personally aware of how Yeargin
22 treated these transactions on their books and records?

23 A I was physically far removed from the project.

24 Q And in fact, even for tax returns filed in the
25 State of Utah by Yeargin, Inc. under their sales tax number,

1 you're not aware of--

2 A I would never have seen those--

3 Q --how those--

4 A I have never seen any tax returns in the ordinary
5 course filed by any of the companies. That's all done by the
6 tax department out of Philadelphia.

7 QQ Now, at some point in--and other appeals which were
8 filed by other entities including WECCO, Standard Industrial
9 Structure, St. George Steel, Yeargin made the decision to
10 separate itself from those other entities and to basically
11 unconsolidate its case from the other cases. Are you aware
12 of that?

13 A I'm not quite sure what you're--what you're saying.

14 Q This appeal--

15 A My impression was that Yeargin was willing to belly
16 up and to pay the money and let--you know, then do a--do a
17 refund. I don't--are you saying that they somehow became
18 adverse to these other entities? I don't think that's true.

19 Q Well, and perhaps that's a question that Mr. Rooker
20 will be able to answer, I'm not sure; but at one point,
21 Yeargin, Inc. was consolidated with three other appeals
22 before the Tax Commission and the decision was made to
23 withdraw from consolidation and handle its matters on its
24 own; you're not aware of that?

25 A I--I became aware some time in the last couple of

1 years that there had been no settlement and that there were
2 some--Glen Woods, I guess, had gone off to do other things in
3 private practice and we changed counsel a few times on--on
4 sudden perceptions of notice of conflict of interest by
5 someone at Kimball, Parr; basically, we tried to cooperate
6 and work with the owner because it was our view--now, he may
7 disagree--but it is our view that the ultimate responsibility
8 for this is still a project expense and will be borne at--out
9 of those--out of those funds.

10 MR. FRANCIS: I don't believe I have further
11 questions of Mr. Burke.

12 MR. PETERSON: No further questions.

13 THE COURT: Redirect?

14 I had just two or three questions. One, the--you
15 used the term a couple of times "union shop" versus "merit
16 shop".

17 THE WITNESS: Yes.

18 THE COURT: Would you tell me what you meant and
19 what the difference is, in your mind?

20 THE WITNESS: Union shop is a--and it's very common
21 in the construction industry that you offer both, it's called
22 double-breasting. Construction companies who are not
23 unionized can have more flexible work rules and in general,
24 can bring in the same activities cheaper and better than a
25 union construction company, however in many situations

1 usually involved work for government entities at various
2 levels, there is a requirement that the contractor must use a
3 construction contractor that is unionized. And then in the
4 case of Federal Government contracting, that they must pay
5 the so-called Davis-Bacon prevailing wages.

6 Because unions attack non-union contractors all the
7 time and one of the methods of attack is to assert that--that
8 the merit shop is in fact unfair and is a mere
9 instrumentality of--of the ultimate controller, that there's
10 common control, common boards of directors, common officers,
11 common accounting, common activities, common purchasing,
12 there's a very careful practice done by larger companies, of
13 which the Rathion group is a very large company, very
14 sophisticated as to these matters, that--that very carefully
15 segregates those activities.

16 The Stearns Catalytic at that time unionized
17 operation was run out of Philadelphia. The Yeargin operation
18 is run out of North Carolina. There's no common officers,
19 there's one common director who happened to be the--the
20 president of the company--that's what my recollection is,
21 that the only common director was the president of United
22 Engineers.

23 And the accounting systems were kept separate so
24 that there never could be an accusation sustained that
25 somehow these things were just mere manifestations of the

1 same thing once they reached one level up.

2 And that's--the significance here is that we used
3 Yeargin. I--probably--I was not involved in the initial
4 discussions and Mr. Rooker could probably answer that better
5 because we were able to do it and that the job could be
6 brought in cheaper and probably done quicker because of the
7 work rules flexibility.

8 THE COURT: You--you used the term a couple of
9 times that Yeargin was the union shop construction company.

10 THE WITNESS: No. It was the merit shop.

11 THE COURT: It was the merit shop?

12 THE WITNESS: Yes. Stearns Catalytic, which is now
13 a company called Rathion Constructors, Inc., was the union
14 shop construction company within the group, and Yeargin,
15 which is now called Harbor Yeargin, the--Rathion's been
16 acquiring and merging and doing a lot of things so--and
17 growing fairly rapidly, but that distinction is still
18 maintained in those two groups.

19 THE COURT: Okay. So union was the merit shop
20 construction?

21 THE WITNESS: No, no. There's a union shop and
22 non-union, if you will.

23 THE COURT: Yeah.

24 THE WITNESS: Right-to-work type thing.

25 MR. PETERSON: Merit--merit, in this terminology,

1 equals non-union.

2 THE WITNESS: Non-union, yeah.

3 THE COURT: Yeah. But Yeargin was the merit or
4 non-union--

5 THE WITNESS: Yes. The non-union construction arm
6 of the Rathion group.

7 THE COURT: Did I say that wrong before? If I did,
8 I apologize.

9 I meant that Yeargin is the merit or non-union shop
10 construction company.

11 THE WITNESS: That's correct.

12 THE COURT: Does that have any significance for
13 this proceeding?

14 THE WITNESS: The only thing I--as I noticed in
15 some of the exhibits, only one, I guess, is that--one of
16 these exhibits that was used, at the top of it, it says
17 Stearns Catalytic and that's exhibit--that's the page that he
18 asked me to look at in Exhibit 3 that--that comes out of what
19 I call the track system. I--I have no idea why the words
20 "Stearns Catalytic" appears up there.

21 The track system was a piece of software that was
22 used on various jobs to in fact keep track of expenditures
23 and stuff, and I suspect it was--I don't want to say
24 notorious for having problems, but it would not surprise me
25 if the words "Stearns Catalytic" appear up here by mistake

1 and the word "Yeargin" should have appeared, but I don't
2 know. I have no personal knowledge of who ran this and who
3 did the input.

4 THE COURT: The significance to you then was that
5 anything dealing with Kearns (sic) Catalytic was not Yeargin
6 and should not be imputed to Yeargin?

7 THE WITNESS: Unless someone could show that in
8 fact that numbers, as Mr. Francis did, that the number is
9 exactly the same as a number on a Yeargin check. It leads me
10 to suspect that there's some relationship, but at the same
11 time, I do not know who produced this, when they produced it
12 and for what reason.

13 THE COURT: Okay. I want to go back to what you
14 started off with then at the--your use of the term "the
15 seconded"--

16 THE WITNESS: Uh huh.

17 THE COURT: --purchasing agent.

18 THE WITNESS: Yes.

19 THE COURT: What was actually done in this case
20 and--

21 THE WITNESS: There's an agreement. There's two
22 things that get done; seconding agreements and some people
23 pronounce it as seconding, which is the way it's spelled, but
24 they're very common, used more in international transactions
25 where you have more of these ex-patriot kind of problems, but

1 also fairly common in--in domestic situations with--with
2 large projects.

3 It's a borrowed servant kind of doctrine. There
4 was a contract between United Engineers who had a purchasing
5 person, who had the expertise that Yeargin needed, if they
6 were going to do the on-site purchasing for WECCO because
7 that person was going to have to work fairly closely with the
8 owner and that doing it from Denver was not as good as doing
9 it from wherever the field office was.

10 And so there's a contract that basically where
11 United Engineers says to Yeargin, I--I'm going to let you
12 borrow this individual, he will still maintain and be my
13 employee, I will continue to pay his salaries and I will
14 provide his benefits; however, he will be under your total
15 direct supervision and control at your job site, therefore,
16 you are one hundred percent responsible for the consequences
17 of his acts and we take no liability for what he does. He's
18 like a borrowed employee and he has the same position with
19 them.

20 Then in order for him to actually perform the--the
21 procurement--because Yeargin didn't have such a person--I
22 remember doing a power of attorney and negotiating what those
23 powers were going to be exactly over what dollar limits this
24 guy could--could enter into transactions, have signature
25 authority, for what kind of subcontracts, whatever he was

1 going to--that--that was signed either by Karl Byrd or by Tom
2 Key, Tom Key, I think was president of Yeargin in North--in
3 North Carolina at the time.

4 And we put that into place so that this--so that
5 they would have that procurement services function available.

6 THE COURT: So that what happened is, United
7 Engineers had a purchasing employee, that employee was
8 shipped over to Yeargin. And who, is your understanding, he-
9 -that person was purchasing for? Was he purchasing for
10 United Engineers or was he purchasing for WECCO?

11 THE WITNESS: He was going on what we call
12 procurement services. All right. He's not in a sense
13 buying--he's--he gets bids, he goes to the owner and says,
14 here's the bid, what do you think, what do you want to do and
15 the owner says, Let's do that one. I don't know what
16 happened in this, I wasn't there but that's what normally
17 happens, and--or he says, we need this, we need that, or
18 someone comes from United Engineers and says, there's been a
19 change, you know, we've got to move this around, change this,
20 get another trailer, then there's a bunch of conversations
21 that occur and then he does, you know, in effect, he deals
22 with the vendors, vendors and subcontractors.

23 THE COURT: That--that person's primary function
24 then is to arrange--to--to find the items to purchase and to
25 arrange the most advantageous price that can be arranged?

1 THE WITNESS: That's what normally happens is that
2 they--you put together what's called a procurement package
3 and again, I wasn't on site, but typically, they'll say go
4 get three bids and he goes and gets three bids and comes back
5 and there's an evaluation, he makes a recommendation, This is
6 what I think and then there's decisions made by other people,
7 usually it's the owner. There--there are companies like
8 Exxon where it's crystal clear that--that they will make each
9 and every little final decision, regardless of the level of--
10 of money involved and there's no slack.

11 THE COURT: So, if that person was doing it, he
12 might have arranged purchases for WECCO or he might have
13 arranged purchases for United Engineering or he might have
14 arranged purchases for Yeargin? Any of those? That--that
15 is, I guess the checks and the invoices would govern what
16 was--how--how--

17 THE WITNESS: Yeah. Theoretically, he would not do
18 it for United. Theoretically, he would not do it for United
19 because he was seconded in and in order to insulate the
20 liability from United for his activities, United, who had a
21 huge purchasing--not huge, probably I don't know, 70, 80
22 people in Denver that--that perform that function, would
23 probably use their own purchasing department if they have a
24 need, you know, you know, what's an engineering company need?

25 An extra mylar and pens and paper and that's what the--

1 THE COURT: I--I guess the actual purchasing
2 documents then would really--

3 THE WITNESS: Yes.

4 THE COURT: --would really govern how the purchases
5 were handled?

6 THE WITNESS: Yes.

7 THE COURT: That's all, does that raise any
8 questions either of you would like to follow up on?

9 MR. FRANCIS: I don't believe so.

10 MR. PETERSON: I'd like to ask a--

11 REDIRECT EXAMINATION

12 BY MR. PETERSON:

13 Q As a follow-up to the final questions you were just
14 asked, whose money was being spent, was it Yeargin's money or
15 was it Pepcon's/slash/WECCO?

16 A The ordinary situation--

17 Q No, just answer the question;--

18 A Yeah.

19 Q --whose was it?

20 A I don't know.

21 Q Okay. When the--when WECCO purchased--well, excuse
22 me, when the Yeargin--when the people seconded to Yeargin to
23 purchase material, were they purchasing for their own account
24 or were they purchasing for the account of the owner?

25 A They should have been purchasing for the account of

1 the owner. That's the way it should work and if they
2 purchased for Yeargin's account, they would very soon hear
3 about it.

4 Q Did they have under the contractual arrangement,
5 any power or right to purchase for their own account, using--
6 using the owner's money?

7 A Contractually, they did not have the right to
8 purchase for their own account.

9 MR. PETERSON: No further questions.

10 MR. FRANCIS: That spawns just one additional
11 question for me, Mr.--

12 THE WITNESS: Yes.

13 MR. FRANCIS: --Mr. Burke.

14 RECROSS-EXAMINATION

15 BY MR. FRANCIS:

16 Q And that is, when you look at the exhibits that
17 have been shown you there, the respondent's exhibits--

18 A Uh huh.

19 Q --can you identify any of those accounts as being
20 the owner's accounts as opposed to Yeargin's accounts?

21 A The only thing is they are project accounts, that's
22 the only thing that I notice, is that they're Pepcon and
23 they're project accounts.

24 Q So you don't know if--if they were indeed an
25 owner's account--

1 A I can't tell from these documents anything other
2 than they were on this job.

3 MR. FRANCIS: No further questions.

4 MR. PETERSON: Well, let me ask one other question.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. PETERSON:

7 Q Let's, in all fairness, let's take a look at these
8 documents. For instance, let's take a look at Exhibit 2
9 which contains--

10 THE COURT: You're referring to Respondent's
11 Exhibit?

12 Q (By Mr. Peterson) Respondent's Exhibit 2, which
13 contains page after page of the project ledger with voucher
14 numbers--

15 THE COURT: Respondent's Exhibit 2 is only a
16 computer print-out--

17 THE WITNESS: Yeah, you're not--you're not on the
18 right one, Bob.

19 MR. PETERSON: Well, I--I have trouble, I'm trying
20 to--

21 THE WITNESS: Exhibit 2 is only one page.

22 MR. PETERSON: Well, this is Exhibit 2 to something
23 else then.

24 THE COURT: Probably the audit report.

25 MR. PETERSON: Yeah, it's--

1 THE COURT: Schedule 2?

2 MR. PETERSON: Let's see, it's under Exhibit 4.

3 Q (By Mr. Peterson) Is that right?

4 A Yes.

5 Q Do you see these?

6 A Yes.

7 Q All right. Now, is there anything on this page
8 that can give you any information of what's happening here?

9 A As I say, this--and you're talking about the--the
10 schedule sheets, themselves?

11 Q Yeah. What does this tell you, if anything at all?

12 A Well, PCC up in the upper--or left-hand corner is a
13 project construction company division of Yeargin, Denver,
14 Colorado. Track system is--means it's probably generated, my
15 guess is, generated as a project report of some kind, but I
16 don't know that.

17 Q Yeah, but what does it tell you about who's buying
18 and under what--

19 A Doesn't tell me anything.

20 Q All right. And similarly, let's--

21 A I mean, if I look, I don't see anything. I can see
22 P.O. numbers, but they--and voucher numbers, but there's no
23 names of anybody.

24 Q All right. Now, let's take a look at the--at the

25 Exhibit 1, which is the audit report.

1 A Yes.

2 Q And Schedule 1 for that.

3 A Uh huh.

4 Q Looking at this, what does this tell you about
5 who's purchasing for whose account?

6 A I don't know. I just assumed that this was--

7 Q (Inaudible)

8 A I don't know who it is. I--it says sales and use
9 tax audit up in the corner and then it says Yeargin, but--

10 Q Oh, is this the--

11 A --thought this had been created by the State.

12 Q Well, it has. And that's my question. Looking at
13 this, does this tell you at all in what capacity what person
14 purchased?

15 A No. See, these are invoices, this is just a list
16 of vendor invoices of billing somebody.

17 Q Right. And you don't have any checks here either,
18 do you?

19 A No. Not on--I mean, this is just a list, just a
20 list of things that were done on the project is my--

21 Q All right. And you can't tell who paid for it, can
22 you?

23 A There's no way on--for me to tell here if it was
24 ever paid.

25 Q Right. And can you see who was invoiced?

1 A Cannot tell. I mean, there's invoice numbers.
2 From these documents, though, there's no way to tell.

3 Q Well, that's my point, Mr. Burke. You really can't
4 tell anything from these, can you?

5 A No.

6 MR. PETERSON: All right.

7 THE WITNESS: Just numbers.

8 MR. PETERSON: No further questions.

9 MR. FRANCIS: No further questions.

10 THE COURT: You may step down, Mr. Burke. Thank
11 you.

12 THE WITNESS: Okay.

13 MR. PETERSON: Just leave the--the documents at the
14 desk, Mr. Burke.

15 THE COURT: Was it Mr. Burke that you wanted--

16 MR. PETERSON: No. Mr. Burke is going to--

17 THE COURT: He's going to remain?

18 MR. PETERSON: --remain.

19 Mr. Rooker we call now to the stand.

20 THE COURT: Mr. Rooker? Mr. Rooker, if you'll take
21 the stand, I'll remind you you've been placed under oath.

22 C. KEITH ROOKER,

23 called as a witness by and on behalf of the petitioner in
24 this matter, after having been previously duly sworn, assumed
25 the witness stand and was examined and testified as follows:

*

DIRECT EXAMINATIONBY MR. PETERSON:

Q All right, Mr. Rooker, let's see if you can perhaps shed some light upon the matters that we've been discussing here.

First of all, let's talk about the various companies involved. We--we have a contract which is Exhibit 1 which is entered into on behalf of, I guess it's PEPCON, is it not?

A That contract, I believe is entered into in behalf of a company called PEPCON Production, Inc., which the acronym for which in our organization is PPI.

Q Okay. And tell me what--tell me what that company is and how it fits into the overall corporation, or the overall corporate organization of what--what I'm going to call the Pacific Engineering group of companies?

A Could I do a little chart on the board? I think it might simplify things?

Q Certainly.

THE COURT: That won't erase, which is why it's still there. I think the--I think the other one will erase and you're welcome to erase that.

THE WITNESS: Okay.

MR. PETERSON: If you push a button, I think it

1 goes around.

2 THE COURT: It does.

3 MR. PETERSON: It's left over from the Union
4 Pacific case.

5 THE COURT: Yes, it is.

6 MR. FRANCIS: You recognize it, huh?

7 MR. PETERSON: I could recognize it.

8 THE COURT: That--you were here for that and I
9 think that's Mr. Wright's and I think he used a permanent
10 marker so--

11 MR. PETERSON: That's right, and he was looking for
12 a chisel.

13 THE WITNESS: I've put four companies in our group
14 on the board. The parent company which is a publicly-owned
15 company is called American Pacific Corporation, headquartered
16 in Las Vegas. The acronym we use in our group is AMPAC.

17 The company that owned the plant in Henderson,
18 Nevada, that manufactured ammonium perchlorate which was
19 destroyed on May 4th, 1988, quite cataclysmically, was
20 called--was and is, because it still exists, called Pacific
21 Engineering & Production Co. of Nevada and the acronym for
22 that is PEPCON.

23 The company belong PEPCON is WECCO, that stands for
24 Western Electro Chemical Company and it is the plant that now
25 owns and operates the new ammonium perchlorate facility

1 that's outside Cedar City, Utah.

2 PPI, on the other side, is a wholly-owned
3 subsidiary of American Pacific, which is now inactive.

4 After the explosion on May 4th, 1988, we had to
5 address the question of how we were going to reorganize to
6 rebuild the facility once the government made that decision
7 and we elected to create a sister company to PEPCON, if you
8 will, so we created PPI for that purpose.

9 PPI conducted the engineering and construction
10 activities until the bank loan closed, which was effectively
11 on March 28th, 1989. For reasons of its own, the bank
12 insisted that the owning and operating company not be a
13 sister company to PEPCON, which is what PPI was and is, but
14 rather, be a wholly-owned subsidiary of PEPCON and WECCO was
15 created for that purpose, and indeed, the bank's counsel
16 prepared the corporate charter under Delaware law for WECCO.

17 So that coincidentally, with the closing of the
18 bank loan, all of the work in process and all of the existing
19 contracts were assigned and transferred from PPI to WECCO and
20 WECCO became the successor to PPI in the project. PPI is now
21 inactive.

22 Q (By Mr. Peterson) Now, explain to me if you would,
23 during the--during the time the project was ongoing, Mr.

24 Rooker, the--the relationship between the owner and the--and

25 the Yeargin-United Constructors group.

1 A Well, this was an unusual kind of project, at least
2 in my experience and my judgment, because the people at
3 Stearns Roger and United Engineers and Constructors and
4 Yeargin, with all due respect, didn't know anything about
5 making ammonium perchlorate.

6 We had a whole cadre of engineers and operating
7 personnel who had operated the facility in Henderson, Nevada,
8 for many, many years, who were intimately familiar with its
9 design and its operation, with the specifications for the
10 equipment down to the kind of electrical wire that was run,
11 the kind of switch gear there was, the kind of pumps that
12 were required, as well as other more major items of
13 equipment.

14 So, in an extremely detailed sense, all of the
15 engineering and design work that was done on this project and
16 all of the construction work that was done on this project
17 was on--under the hour-by-hour, day-by-day, immediate
18 supervision of the owner. Nothing was done without the
19 direction of the owner in great detail because our contractor
20 was trying to help us, but they didn't know anything about
21 what we were doing. They learned a lot about it in the
22 process, but at the beginning, they knew nothing.

23 Q Now, because of that then, in terms of the--in
24 terms of the--all of the activities of the Yeargin and the
25 Stearns group, who--who directed, controlled and mandated

1 their operation as a--at the practical level?

2 A We had a project executive by the name of Joseph
3 Cuspoli who was in immediate charge of the Stearns-Roger
4 design engineering group, the Yeargin Construction group and
5 the PEPCON, however you want to call it, engineering group
6 that was supervising this whole process.

7 They met every day at 6:00 o'clock in the morning,
8 those meetings ordinarily lasted three or four hours. The
9 detailed engineering drawings were reviewed in great detail
10 in those meetings, the specifications for items to be
11 procured were approved--reviewed and approved. There were no
12 changes made to the project without going through a detailed
13 change order process through that committee, if you will, all
14 under Mr. Cuspoli's supervision.

15 He was not an employee of ours, he was a consultant
16 to the company, but he was engaged by us for the purpose of
17 managing this project and he managed, as I say, the Stearns
18 design engineering group, the Yeargin construction group and
19 our engineering and operating group.

20 Q Now, we've heard something about the role of NASA
21 in all of this; were they at all on site?

22 A They--they had an overwhelming and immediate
23 interest in the timely commencement and expeditious
24 completion of this project because it impacted their program
25 in an overwhelming way. They assigned an--a senior engineer

1 from the Marshall Space Light Center in Huntsville, Alabama,
2 whose name I've been trying to think of all morning, but I
3 don't remember it. I can see his face--

4 Q You could perhaps draw a picture.

5 A I almost--if I were an artist, I could,--

6 THE COURT: Not unless he's better than I am.

7 THE WITNESS: --'cause I spent a great deal of time
8 with him and I'm embarrassed that I don't remember his name;
9 but at any rate, he came to Las Vegas and Cedar City and he
10 was a part of the group that Mr. Cuspoli managed and
11 represented NASA in those daily deliberations, was at the
12 site at all times.

13 And while--while it is not fair to say that he
14 directed the work in the same way that Mr. Cuspoli and our
15 people directed the work, he was intimately involved in the
16 supervision of the work and nothing was done without his
17 knowledge and concurrence.

18 Q (By Mr. Peterson) All right. Now, let's--let's
19 talk briefly about one of the final players in all this,
20 which was mentioned by Mr. Burke and that is the lending
21 institution. Having represented such institutions from time
22 to time, my recollection is they take a keen interest in
23 things as well. What was the role of the lending institution
24 in--in particularly in how the funding of this project went
25 forward?

1 A Well, I think--I think I need to put that in
2 perspective if I may, Mr. Peterson. The--the explosion
3 occurred on May 4th, 1988. We were advised by a task force
4 that was called the Ammonium Perchlorate Advisory Group that
5 was chaired by an assistant secretary of the Air Force and an
6 associate administrator of NASA as co-chairmen, that they had
7 made a decision to extend support to our organization to
8 rebuild. That advice came on the 15th of June.

9 Because we had an indication from discussions in
10 the three weeks before that or so, that that would be the
11 decision, we had started on a site selection process.

12 In--on about June 24th or 25th of 1988, a
13 delegation from NASA and the department of the Air Force met
14 with our people, we visited three of the sites that we had
15 considered, including one on the Moapa Pahute Indian
16 Reservation in Southern Nevada, one up in Lincoln County,
17 Nevada, and the site that we are on now, out west of Cedar
18 City.

19 If one wants to be really technical about it, the
20 site selection was made by Mr. George Abby of NASA. He went
21 to the site in Iron County and put his cane down in the
22 ground and said, This is the place and that's what we did.

23 It was cow pasture, there wasn't a road, there was
24 just a rutted trail to the site for several miles. Now, the
25 county agreed to build a road, we had--we were working

1 directly with Governor Bangerter on a day-to-day basis and
2 his staff, there was a great deal of public support in Iron
3 County and in the State, as we understood it for this project
4 and that was an important consideration.

5 Now, we didn't have any money. We had about \$3
6 million left from our insurance settlement, a casualty
7 insurance settlement and we were trying to keep our employees
8 together. We thought this project was going to cost, if we
9 had re-built at the old site, where we could have kept the
10 under-grounds and all of that, about \$35 million. It ended
11 up costing about 110 million, so we had to go look for a
12 loan.

13 NASA wanted to start the project instantly and so
14 almost at the same time that that site selection was made in
15 the fashion I described, Mr. Abby committed NASA to provide
16 up to \$10 million in funding for the procurement of severable
17 machinery and equipment and associated engineering services.
18 NASA, as it was explained to me, does not have statutory
19 power to advance funds for the procurement of what they call
20 brick and mortar, permanent things; but they can advance
21 funds for the severable items, the machinery and equipment.

22 So, the original commitment was that they would
23 fund up to \$10 for that purpose.

24 (Tape change - some proceedings not recorded.)

25 THE WITNESS: I, 1988, in Las Vegas, in our

1 building, the building we were renting space in. They
2 commenced doing work and they commenced being paid from those
3 funds that were provided by NASA.

4 After we made the engineering design contractor
5 choice, we continued in the selection of a construction
6 contractor and two or three weeks later, I think, selected
7 Yeargin as the construction contractor, really, United
8 Engineers, I suppose, although we knew from the beginning
9 that Yeargin was going to be the organization that would do
10 it.

11 We entered into the contract that has been admitted
12 in evidence in early August, ground was broken in October and
13 the project and commissioned and turned over to us ten months
14 later. That's probably the fastest track major industrial
15 project that's been done in the last 30 years in this
16 country.

17 So, I'd be--I'd be surprised if the State Tax
18 Commission wouldn't find purchase orders on my letterhead in
19 the file somewhere and frankly, an effort to make something
20 out of mistakes is really just an effort to mislead.

21 There isn't any question about the fact that each
22 and every item of machinery, equipment, material, everything
23 that was incorporated or consumed in this project was bought
24 for the account of the owner. And to the extent that there
25 is documentation that indicates to the contrary, the fact

1 that if there's only a little bit of it proves that it's just
2 a mistake and I'm not surprised those mistakes were made,
3 because were working 24 hours a day, seven days a week, just
4 as hard as they could work to get this project done.

5 Q Now, you have in front of you Exhibit 2, which is a
6 stipulation.

7 A Yes.

8 Q Mr. Woods--I think it's No. 2--

9 A Yeah.

10 Q --Mr. Rooker, did you--did you have any knowledge
11 of that stipulation at about the time it was entered into?

12 A Yes, I did.

13 Q And what was Mr. Woods' connection with your
14 companies at that time?

15 A At the time this was entered into and now, I was
16 and I am executive vice president and general counsel of
17 American Pacific and the principal legal officer of all of
18 its subsidiaries. Mr. Woods worked for me and had the title
19 of associate general counsel of the parent company and
20 similarly provided legal services to the subsidiaries. We
21 also had a small law firm called Rooker & Gibson and Mr.
22 Woods was a partner of mine in that firm.

23 So, I supervised Mr. Woods' work. Mr. Woods
24 reviewed with me in great detail the discussions he had with
25 Mr. Francis that led to this stipulation. I reviewed the

1 language of this stipulation to satisfy myself that it
2 conformed to the facts as I understood them. And I would
3 never have authorized its execution had I not believed that
4 was the case.

5 Q Now, we have--we have addressed with particularity
6 sections of that stipulation, Mr. Rooker.

7 A Yes.

8 Q Let me ask you to just look at it again and my
9 question to you is whether or not--whether or not Paragraph
10 12 accurately states the matters contained therein.

11 A It certainly does.

12 Q Any qualification that you would add to that?

13 A No. I--I think there is a distinction that is
14 important to be made. I think it may very well be that
15 Yeargin procured things for its own account that were
16 necessary to the provision of the services that it provided;
17 maybe they bought paper and pencils and gasoline for their
18 vehicles or whatever, I don't know.

19 But if we're talking about items of machinery and
20 equipment, pipe and wire and cement and rebar and
21 transformers and switch gear and power stations, vessels,
22 reactors, dryers, blenders, of which there are many in this
23 project, anything that was incorporated in the work was--it
24 was clearly understood, I believe the contract clearly
25 provides for and this paragraph says that those were procured

1 for WECCO's account and the funds were always handled just
2 like a construction draw, even when they were NASA funds,
3 which was the case from June until the loan closed in March
4 of 1989 and then after that, when they were loan funds, it
5 was always handled just like a construction draw account.

6 WEC--Yeargin should never have had any money out
7 because they were buying things on credit, they would submit
8 a draw application, that draw application would be funded and
9 they would pay the bills. Now, the fact that they may have
10 used their checks to pay the bills doesn't mean anything; the
11 fact that they may have used their paper for a purchase order
12 doesn't mean anything. They were buying for WECCO's account,
13 PPI and then WECCO, and they were using our money to pay
14 those bills.

15 MR. PETERSON: Thank you, Mr. Rooker. I really
16 have no further questions.

17 CROSS-EXAMINATION

18 BY MR. FRANCIS:

19 Q Mr. Rooker, are you familiar with Respondent's
20 Exhibit 1, which is the audit report?

21 A I think I glanced at it when it arrived in our
22 office. I think we got a courtesy copy of it at some point
23 or Mr. Woods gave me a copy and I looked at it, but I didn't
24 read it in detail.

25 Q Have you seen the schedules that are attached

1 thereto showing the itemized items that the respondent
2 alleges were purchased by Yeargin?

3 A Purchased by Yeargin for whose account, Mr.
4 Francis?

5 Q At least paid for by Yeargin checks?

6 A Was that what this says? I mean, I don't see that
7 on this document.

8 Q Well, are you familiar with those schedules?

9 A I--I glanced at them and I--and I noted as I
10 noticed now that they do not say anything about whose checks
11 were issued to pay these things--

12 Q Do you know--

13 A --much less where the funds came from that were
14 used to pay those checks when they hit the bank.

15 Q Did these items get cost-accounted to WECCO's
16 accounts?

17 A Absolutely. They're all on our books, we've
18 depreciated every single item that's incorporated in the
19 work.

20 Q And have you supplied those books and records to
21 the auditors that--

22 A Yes--

23 Q --show that?

24 A Yes, we have.

25

1 MR. PETERSON: Your Honor, I'd only have one
2 question.

3 REDIRECT EXAMINATION

4 BY MR. PETERSON:

5 Q And that is, with respect to the--to the lists that
6 were just asked about, Mr.--Mr. Rooker, these are the type
7 of--of materials, et cetera, that were in the work, are they
8 not, these are--that you've discussed in your earlier
9 testimony?

10 A I think they're some of both.

11 Q All right.

12 A Certainly in the main, they are things incorporated
13 in the work, but for example, the very first item on Schedule
14 1 is a xerox laser plotter. We didn't keep that. I assume
15 Yeargin bought that and took it away with them.

16 Q All right. So there may be--there may be items in
17 here that are Yeargin--

18 A Sure.

19 Q --as well as--

20 A But the Item No. 881107, I'm sorry, I'm having
21 trouble with the line here, which is something from a vendor
22 called Poly-Drain, trench drains and catch basins, unless
23 somebody was doing something very strange, that was
24 incorporated in the work. Pipes and fittings, hydro-test
25 pumps, lighting fixtures, fire hydrants, 38 fire hydrants,

1 those are things incorporated in the work. And--and as I--as
2 I said, Mr. Peterson, if--if somebody is making a distinction
3 here based on whose check it was or whose purchase order form
4 it was, then it really is sort of a misleading thing because
5 it could have been my check or my purchase order form.

6 The point is that as a matter of substance,
7 everything incorporated in the work was for the account for
8 WECCO and paid for with WECCO funds.

9 MR. PETERSON: Thank you.

10 THE COURT: Anything further, Mr. Francis?

11 MR. FRANCIS: No.

12 THE COURT: You may step down, Mr. Rooker.

13 MR. PETERSON: May Mr. Rooker now be excused, your
14 Honor?

15 THE COURT: As far as I'm concerned, he may.

16 MR. FRANCIS: No objection.

17 THE COURT: You--you may be excused, Mr. Rooker.

18 MR. ROOKER: Thank you.

19 THE COURT: Anything further, Mr. Peterson?

20 MR. PETERSON: No.

21 THE COURT: Mr. Francis?

22 MR. FRANCIS: I'd call Mr. Jacobsen.

23 THE COURT: Mr. Jacobsen, if you'd take the stand,
24 you're reminded you have previously been placed under oath.

1 called as a witness by and on behalf of the respondent in
2 this matter, after having been previously duly sworn, assumed
3 the witness stand, and was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FRANCIS:

6 Q Would you please state your name for the record,
7 Mr. Jacobsen?

8 A Ron Jacobsen.

9 Q What is your position with the Tax Commission?

10 A I'm a senior auditor, based in the Cedar City
11 branch office.

12 Q How long have you had that position and how long
13 have you been in Cedar City?

14 A I've been an auditor with the Utah Tax Commission
15 for approximately 22 years. I've been a senior auditor for
16 about the last ten.

17 Q And all located in Cedar City?

18 A All but four years, which were here in Salt Lake.

19 Q Are you familiar with the audit of Yeargin, Inc.,
20 which is the subject matter of this hearing?

21 A Yes. I am.

22 Q Will you explain your involvement with that?

23 A My involvement was from inception on, I performed
24 the field work in Las Vegas, I had several meetings in my
25 Cedar City office and I prepared the audit report.

1 Q Would you explain procedurally what took place in
2 this audit from the first time you were assigned to the audit
3 to the issuance of the statutory notice?

4 A Normal audit procedure is to contact the
5 individuals involved. In this case, I contacted Glen Woods
6 in Las Vegas, he--we arranged a time and date to do the
7 audit, which was in Las Vegas. We met with Mr. Woods and an
8 individual named Leslie Coliker, who was the controller in
9 Las Vegas. That occurred on May 20th, 1991. Yes.

10 We discussed--part of our audit process and audit
11 program is to discuss what happens in the State of Utah, what
12 the scope of their business is in the State of Utah, their
13 accounting records, their accounting process. From that, we
14 determine an audit approach.

15 Q Now, when you met regarding Yeargin, Inc., you had
16 been involved in audits of other entities; is that correct?

17 A Yes, I have.

18 Q Were they related to Yeargin, Inc.?

19 A They were not necessarily related in--directly.
20 They were suppliers to Yeargin.

21 Q And did these other entities have an involvement
22 then or was everything focused basically on the new
23 production facility here in Cedar City, Utah?

24 A I'm not sure I understood that. They were
25 suppliers. I have--
Machine-generated OCR from original document

1 what the relationship was.

2 Q From audits of other entities?

3 A Other entities, yes.

4 Q Okay. Would you explain then from that initial
5 discussion with Ms. Coliker, was it?

6 A Coliker.

7 Q Coliker?

8 A Well, she's now married but that's her maiden name.

9 Q How did you conduct the audit?

10 A We met in their conference room, AMPAC's conference
11 room in Las Vegas. We, after our initial discussion, we
12 requested certain records. Those records included purchase
13 orders, purchase order status reports. We also requested
14 documents showing how Yeargin had determined the amounts that
15 they had paid on their quarterly sales tax returns.

16 Q Once you reviewed those documents, and I assume the
17 provided all those documents for you?

18 A The sales tax returns had to be shipped, over-
19 nighted from Greenville, and the only return available is in
20 the exhibits. The other returns could not be located by the
21 Greenville staff.

22 Q When you say the only returns that were supplied,
23 there are a number of returns that are supplied in our
24 exhibits.

25 A The work papers that relate to the returns prepared

1 by Yeargin. The only return and the work papers--the only
2 work papers available supporting the amounts reported by
3 Yeargin were the July-September, 1989, return. All other
4 returns, they could not find any work papers.

5 Q Okay. Once you had an opportunity to review those
6 documents then--by the way, how long did that time period
7 take, to review those documents?

8 A We--the field, actual field work took approximately
9 five days.

10 Q And at that time, what was your procedure? To
11 prepare a preliminary report?

12 A Normally what we do is go back, prepare very
13 informal schedules, we present copies of those schedules to
14 the responsible individual who reviews our work.

15 Q And when did that--that take place, approximately?

16 A We would have went back to Cedar City and prepared
17 the schedules, we probably would have provided them late May
18 to Mr. Woods.

19 Q Late May of '92?

20 A '91. Could have been early June.

21 Q And basically, what happened after that point?

22 A That precipitated several meetings between that
23 date, over the next year-and-a-half, we made numerous
24 eliminations after we determined that certain purchases
25 qualified for the manufacturing exemption.

1 Q So, from your original schedules, there have been a
2 number of items that were deleted before you reached the
3 point of issuing schedules with the statutory notice?

4 A Correct. Numerous eliminations.

5 Q All right. Of those items that survived into the
6 statutory notice, approximately how many more were there that
7 had been eliminated?

8 A My original schedules had 20 pages. We worked that
9 down to 14 pages; dollar value is probably more important,
10 dollar value was probably cut in half.

11 Q Would you turn to Exhibit 1, Respondent's Exhibit
12 1? Would you identify that document?

13 A This is a standard statutory notice issued from our
14 Salt Lake--Salt Lake City office.

15 Q And three pages down on that, or Page 1 of the
16 attachments to the statutory notice, we have a summary page
17 here; would you explain what that says?

18 A That is a summary of the adjustments made in the
19 body of the audit report. It calculates additional tax
20 penalty and interest and it also gives some comments on what
21 gave rise to the additional liability.

22 Q And behind those next two pages, we have an Exhibit
23 A, Page 1 of 1. Can you explain what this and the following
24 pages summarize?

25 A Exhibit A is a summary page that calculates the tax

1 due, that tells us what taxing entity shares in the--the
2 sales tax, it calculates interest due. The figures--the
3 additional taxable amounts as we call them on Exhibit A comes
4 from what we call Exhibit A-1.

5 Q And is that attached as the next page?

6 A I--A-1, yes. A-1 is a summary of the supporting
7 schedules. It's the total--

8 Q And--

9 Go ahead.

10 A It's the total of, in this instance, Schedule 1 and
11 Schedule 2.

12 Q All right. And following that page, then begins
13 Schedule 1; is that correct?

14 A That's correct.

15 Q Would you explain how you came about and explain
16 each column in the Schedule 1?

17 A Column 1 is generally a--a transaction date. That
18 usually will be the date shown on vendor invoice. Invoice
19 number is the vendor invoice number. Reference number, as I
20 recall, will be a check number, which will be a Yeargin check
21 number. Vendor is the supplier. Account code is blank,
22 generally there's no account code. Box, the P.O.s were sent
23 from Denver to Las Vegas, they were boxed up. We used that
24 as a control, so that we knew what boxes, if we had to go
25 back and find a particular invoice, we could do that, we

1 could identify it by box and find it easily.

2 Q In other words, all of the purchase orders had been
3 boxed by Yeargin's people in Denver--

4 A That's correct.

5 Q --when they sent them to you? Or did you review
6 them in Denver?

7 A When we made the contact with Mr. Woods, I believe
8 they were either there, had just arrived or were in transit,
9 I believe they were in transit. That was explained that the
10 P.O.s were actually requested by WECCO people so that they
11 would have the information to buy repair parts, obtain
12 warranty information, so on.

13 Q And the next column?

14 A Next column, S and U is blank, that just tells us
15 whether it's a sales tax or use tax transaction. The A
16 indicates whether it's an asset or not, that should be blank.
17 Description is a very brief description of what is being
18 bought. Tax paid, if in instances a vendor may collect a tax
19 that we allow credit for, it may be a rate less than what the
20 Utah rate is. We allow credit for tax properly paid.

21 The other column, taxable amount, is the amount we
22 feel is subject to the Utah tax.

23 Q Now, did you personally review the documents from
24 which these schedules were prepared?

25 A I did and it would have all these schedules were

1 also prepared by a--an assistant auditor, Jean Howells, who
2 was under my supervision.

3 Q Would you explain the--the procedure? How did you
4 make a determination as to whether or not an item should have
5 been included on Schedule 1?

6 A Our approach was to determine, look at the purchase
7 order. We looked at what area it was going to, if it was
8 readily determinable that it was a piece of manufacturing
9 equipment, we exempted it, we did not go--we did not list it
10 here if it was possible to--

11 Q So, even on your initial schedules--

12 A Oh, yes. Yes. If we could tell it was a piece of
13 equipment, there's no question that it was a new expanding
14 and that they qualified for the manufacturing exemption. If
15 we could make that determination initially, it did not get
16 listed on this Schedule 1.

17 If there was some question, if we did not know,
18 there are a lot of technical pieces of equipment bought, we
19 may have listed it either on the Yeargin schedule--I should
20 also note, too, that during our review of all these purchase
21 orders, we had audits going, both of Yeargin and the WECCO,
22 WECCO was also buying at the same time and those were later
23 on in the same boxes. We keyed to the paper trail, if you
24 will; if WECCO paid for something, it ended up on the audit
25 of WECCO. If Yeargin paid for it, it ended up on the Yeargin

1 audit, these schedules we're looking at.

2 Q So, what documentation would you find in order to
3 make an entry on the Yeargin audit?

4 A We looked at checks and purchase orders.

5 Q One or the other would have existed?

6 A Yes.

7 Q And then the item would have been--

8 A Yes.

9 Q --keyed in?

10 A Within the purchase order file or jacket, each
11 purchase order, there--purchase orders started with 1000 and
12 went through 13000-something; within that jacket, there was a
13 copy of a purchase order, copy of a check paying that
14 purchase order, purchase request, generally, and a copy of
15 the vendor invoice.

16 Q Did you retain copies of those invoices or
17 documents? Did you photocopy them and--

18 A We took a, what we felt was a representative
19 sample.

20 Q Why would you not take them all?

21 A I couldn't--I didn't have a semi.

22 Q It was a matter of the bulk then?

23 A The bulk and as we reviewed the purchase orders,
24 they were a standard purchase order for the most part, we
25 began made copies of what we felt was representative.

1 Q Would your testimony be the same with regards to
2 Schedule 2 included in the audit?

3 A The source of audit Schedule 2, as they paid the
4 bills, as Ms. Coliker paid the bills, she--if they had paid
5 tax to a vendor, she pulled that invoice out, made a copy and
6 put them in binders or books, and that's what my reference
7 alludes to, is Ms. Coliker's books.

8 We went through those books, made a determination,
9 yes, you did pay tax in error, we're going to give you a
10 credit back for these materials that you paid tax in error
11 on. We agreed these items qualified for the manufacturing
12 exemption.

13 Q So there were amounts that were actually deducted
14 from the very start?

15 A This 15 pages' worth.

16 Q Did you review other financial records of Yeargin
17 in the course of the audit?

18 A The other fi--any other financial records,
19 corporate return information, general ledger, so on and so
20 forth, were not available in Las Vegas. Those, I suppose,
21 were available either in Greenville or Philadelphia.

22 Q Did you review the general ledgers?

23 A Of Yeargin?

24 Q Yes.

25 A We--the only information we had was the extract

1 from the sales tax--what we call a sales tax liability
2 account or a payable account. That was the information
3 supporting what they had paid on that July-September, 1989,
4 sales tax report.

5 Q Did you review general ledgers of other entities
6 related to the WECCO facility and/or other financial records
7 of other--

8 A Generally, no. In this type of audit, we don't get
9 into a lot of financial reviews, if you will. We do use
10 general ledgers. I don't recall if we got into the detailed
11 general ledgers of WECCO; in fact, the accounting for all the
12 purchases as machinery and equipment, I understand, was they
13 never really made a determination of what they should do with
14 it or depreciation of it until several years after the
15 project was done, and that was my conversation with Mr.
16 Naylor, who's their plant controller.

17 Q Who else from Yeargin participated in--in providing
18 you information for discussions, other than Mr. Woods and--

19 A Ms. Coliker. Those are our two principal contacts.
20 Originally, Terry Naylor provided a lot of information and
21 did a lot of the research on eliminating items from my audit
22 Schedule 1. Mr. Naylor is the plant controller in Iron
23 County, or Cedar City facility.

24 Q For all the items that are included in the audit
25 report, were you ever provided information from anyone that

1 these items had actually been cost-accounted for on the
2 records of other corporations or entities?

3 A No.

4 Q If they had, would they have appeared in this
5 audit?

6 A Whether or not they had been cost-accounted by
7 Yeargin or some other entity would not have made a
8 difference. We looked at who paid--what was being bought,
9 who paid for them. We looked at--what is this material? Is
10 it is concrete? Is it being poured in the ground? If it
11 was, we considered the person paying for those materials to
12 be responsible for the tax.

13 Q And why is that?

14 A Under our rules and statutes that requires the
15 person converting tangible personal property to realty to pay
16 tax on their cost of materials.

17 Q So, you would have determined Yeargin to be a real
18 property contractor by taking tangible personal property and
19 converting it to real property?

20 A That's correct.

21 Q And you had to make that determination on each of
22 these items as well?

23 A I did.

24 Q If there were items which--or tangible personal
25 property that were not converted, would you have given

1 credit, or did you give credit, in that year-and-a-half?

2 A I looked at the type of material being bought, if
3 it was the type of material that would not become part of the
4 facility, i.e., small hand tools or radios, anything used to-
5 -used by Yeargin to perform their contract, it would be
6 probably listed on audit--well, it would be listed on audit
7 Schedule 1.

8 It would not be on audit Schedule 2 because I would
9 feel like tax was due, if--if they bought something locally
10 and paid sales tax and it was a small hand tool or something,
11 it would not show on my audit Schedule 2.

12 Q Would you turn to Exhibit 2, Respondent's Exhibit 2
13 and explain what that document is?

14 A This is what we call an O-2 screen from our system,
15 it details the returns, the amount of tax reported and
16 payments made on the account of Yeargin. It would also show
17 my audit liability.

18 Q And it does show that, does it not?

19 A It does.

20 Q What--why does the ending balance equal zero?

21 A Yeargin paid the audit.

22 Q So it shows credits being made by Yeargin of
23 amounts which actually brought the tax liability amount to
24 zero because of credited payments made by Yeargin?

25 A Correct. Against Yeargin's account.

1 Q Turn to Exhibit 3.

2 THE COURT: R-3.

3 MR. FRANCIS: R-3. (Inaudible) --the letter "R",
4 I'll do the same--

5 THE COURT: I have--I have not, but I will.

6 MR. FRANCIS: We'll refer to them as well.

7 Q (By Mr. Francis) Can you explain what is included
8 in Exhibit R-3?

9 A Exhibit 3 are photocopies of the sales tax returns
10 filed by Yeargin with the Utah State Commission. These are
11 copies from our file system.

12 Q Why would Yeargin have to file or choose to file
13 tax returns?

14 A Our statutes again require that individuals who
15 have a tax liability, become licensed and pay tax on any tax-
16 free materials consumed in the State of Utah or if they're a
17 retailer, then obviously, they didn't have to become licensed
18 or report tax on any retail sales. In this instance, they
19 have a--what we call an "H" number, which is referred to as a
20 consumer number, that allows them to report tax on any tax-
21 free materials consumed in the State of Utah.

22 Q In your discussions with representatives of
23 Yeargin, Inc., did they explain why they have accounted for
24 and filed returns on purchases during the time period?

25 A Again, my only contact was with Mr. Wood. One

1 would assume they paid tax on these returns believing that it
2 was due.

3 Q With respect to the return for July through
4 September of 1989, I believe that's the second to the last
5 page in Exhibit R-3.

6 A Okay.

7 Q Can you tell me the amount of liability that is
8 stated on that return?

9 A They show a liability of \$30,339.64.

10 Q And is this the return for which you say they did
11 provide supporting material?

12 A Yes.

13 Q Is that supporting material included in Exhibit R-
14 4?

15 A Yes. That is the detail provided to me by
16 Greenville accounting office, supporting the figures they
17 reported on that July-September return.

18 Q And again, just asking if you'd focus on that, does
19 the amount of liability on the tax return in question from
20 Exhibit R-3 correspond to the amount listed on the check
21 voucher under the line item ACCR tax?

22 A Yes. That's a brief description, saying accrued
23 tax and it does correspond to the payment made on their
24 return, it also corresponds to their liability account, sales
25 tax liability account.

1 Q Now, attached to the first page of Exhibit R-4 are
2 additional documents and schedules. On the second page, the-
3 -are you familiar with that page?

4 A Yes.

5 Q The second page of R-4?

6 A Second page is a transmittal. Is that the one?

7 Q Yes.

8 AA That was part of the packet received from
9 Greenville.

10 Q But you don't--aren't familiar--would this have
11 been a document prepared by Yeargin?

12 A One would assume so. It came from Greenville.

13 Q Okay. You don't know?

14 A I don't know. I do not know that for sure.

15 Q Okay. Turning to the third page then, would this
16 computerized schedule, which was of some regard, an item of
17 discussion with Mr. Burke's testimony, have you reviewed this
18 schedule?

19 A This is the schedule we received from the
20 Greenville accounting office. We did--part of our audit
21 process is to determine if tax has been--from the tax paid to
22 us, we determine if that amount is correct. Our process is
23 to trace the accruals, as we call them, shown in the right-
24 hand column, back to a source document, a source document
25 being a vendor invoice.

1 You'll notice in the far right-hand corner, there's
2 some tick marks. Those tick marks indicate to me that we
3 agreed the tax accrued back to a source document and we agree
4 that the tax as posted is correct.

5 Q Okay. And let me ask you, first of all, you did
6 not prepare this schedule; is that correct?

7 A No.

8 Q It was supplied by--

9 A By Yeargin's accounting office from Greenville.

10 Q Okay. And the handwritten check marks in the far
11 right column, did you make those marks?

12 A I did.

13 Q And why did you make those marks? For instance, if
14 you would explain the second item on the first page of that
15 schedule.

16 A Part of our compliance test is to determine if the
17 amounts reported are correct. We do that by selecting
18 certain entries and going back to a vendor invoice to see if
19 the tax has been properly computed and posted to their
20 liability account. What that--

21 Q Would those invoices then have been referenced back
22 to the boxes of documents you reviewed?

23 A In this instance, it shows a voucher number and a
24 P.O. number. The--the P.O. number in this instance is 1001,
25 actually 10001. The--we went back to purchase order 10001

1 and found that voucher number which could be a check number
2 or some other reference. We found that--we found that vendor
3 invoice, we saw where they had accrued tax, what tax base
4 they used and we agree that it was properly posted into this
5 liability account.

6 Q Could you tell in a review of these documents that
7 the items purchased and filed on the returns were used in the
8 WECCO facility?

9 A Yes. This is the accrual account for the PEPCON
10 plant.

11 Q And how do you know that?

12 A At the top, it's captioned. The project number is
13 there.

14 Q Which project number is that?

15 A I believe it's the 79700 is the--right next to the
16 track P.C., then it says 79700, PEPCON AP, that is the
17 project number, as I recall using this.

18 Q Is there any significance to the first column below
19 total for account, where it says accrued tax and it has an
20 account number there?

21 A That is a Yeargin liability account, general ledger
22 liability account.

23 Q Do you happen to know what that number represents?

24 A The two--that shows 2000?

25 Q Yes.

1 A Is that the one? Again, that's--that's just
2 general ledger account number from the Yeargin system.

3 Q With the following pages on these items, again
4 check marks or tick marks don't appear by each line, only
5 those that you randomly selected have been reviewed?

6 A That's correct. We--to do a hundred percent review
7 would be a--not a good use of auditor time generally, unless
8 there are some serious problems. In this instance, we found
9 no problems, so we did not review a hundred percent.

10 THE COURT: Let me just interrupt. Those purchase
11 orders, were they Yeargin purchase orders?

12 THE WITNESS: Yes.

13 THE COURT: So, even though this form is entitled
14 Stearns Catalytic, the purchase orders were in fact Yeargin,
15 Inc.--

16 THE WITNESS: That's correct.

17 THE COURT: --purchase orders?

18 Thank you.

19 Q (By Mr. Francis) Mr. Jacobsen, in that regard, let
20 me ask you another question. If they had been Standard
21 Industrial purchase orders or WECCO purchase orders, what
22 would you have done then?

23 A If it was a piece of material we felt was subject
24 to tax, it would have been listed on the audit of WECCO or
25 Standard Industrial Structures or whoever; it would not be

1 reflected on my audit schedules.

2 Q And again, were there any duplications of any of
3 the items included in the Yeargin audit; in other words,
4 would any of the items in your Yeargin audit appear on audits
5 for any of the other entities?

6 A They should not appear there, no. We, again, look
7 at who paid for it. If there were by chance joint checks--
8 there were no joint checks. No. It was pretty clean cut,
9 Yeargin paid for it, WECCO paid for it; WECCO paid for it,
10 WECCO audit.

11 Q And ask you, turning to Exhibit 6--

12 THE COURT: R-6?

13 Q (By Mr. Francis) --R-6, would you identify the
14 documents that are included in there and why they are
15 significant?

16 A That is--this would have been representative of
17 what we were looking at in the purchase order files. This is
18 a--well, this is a subcontract with Western Rock Products.
19 Western Rock Products supplied the redi-mix concrete and some
20 other gravel products, rock products. We felt that it would
21 be advantageous to document what the records were like, that
22 they--who was making the purchase, who was paying for the
23 purchase, what the scope of work was, if they were a
24 subcontractor, if they were a supplier.

25 Q And that's with specific reference to the con--

1 subcontract that is included in the exhibit; is that correct?
2 The first five or six pages?

3 A Yes. Correct. It's a subcontract to provide redi-
4 mix concrete, Western Rock provided the concrete. They set
5 up a portable batch plant on site.

6 Q And attached to that contract is an exemption
7 certificate; is that also included in the records of Yeargin?

8 A Yes, it was. That would have been attached to the
9 purchase order and it would have been contained in the
10 purchase order folder, if you will; each purchase order had a
11 folder. Again, within that folder was the documents we're
12 now looking at.

13 Q And again, Western Rock Products is merely
14 indicative of what you would find in other folders but you
15 photocopied and kept Western Rock--

16 A That's correct.

17 Q --among others?

18 A That's correct. It was our observations that the
19 purchased orders being issued were pretty much standard,
20 boilerplated.

21 Q And why did you conclude that the products
22 purchased from Western Products--Western Rock Products should
23 be included in as taxable items?

24 A We looked at the person who was buying them and
25 converting them from personal to realty. Yeargin was

1 responsible to convert this concrete to whatever, footings,
2 foundations, whatever it was used for, Yeargin personnel
3 converted it, they poured it.

4 Q Were there separate invoices for each batch of
5 concrete from Western Rock Products?

6 A Each load would have generated a separate invoice,
7 each truck load.

8 Q And did you again trace those invoices to actual
9 check vouchers or checks cut by Yeargin?

10 A We--yes, we listed for the most--as I recall,
11 listed each invoice from Western Rock, it could have even
12 been statements, I'd have to go back through my schedules; we
13 may have used statement amounts. Statement from Western Rock
14 would total their products.

15 Q Would you please go ahead and review your Schedule
16 1 in the audit schedules and see if you can refresh your
17 recollection? There are a couple on Schedule 1 which--

18 A I show invoice numbers. It looks like we detailed
19 it down to invoice level.

20 Q Can you tell me where you're looking to--

21 A I'm looking on Page 5, Schedule 1, Page 5. The
22 first two entries there are invoice numbers and they're
23 different, the first two are different numbers, different
24 amounts.

25 Q And again, unless they had been paid for with

1 Yeargin checks, they would not have appeared on the Yeargin
2 audit report?

3 A That's correct.

4 Q Would you turn to Exhibit 7, please, and identify
5 the first sheet in Exhibit R-7?

6 A Exhibit 7 again is a--a copy of my Schedule 1,
7 Audit Schedule 1.

8 Q So you did prepare this cover sheet or at least
9 this is a page from your audit report?

10 A This is a page from my audit report.

11 Q And can you tell me why there's an item that's
12 highlighted or apparently highlighted on that page?

13 A What that does is show that I had listed a tax free
14 purchase from Comfort Zone of a piece of equipment bought tax
15 free that had not been reported through on their quarterly
16 returns. It also goes back to an invoice which is underneath
17 that.

18 Q All right. Let's take it page by page--

19 A Page by page--

20 Q --if you would. The second page of Exhibit R-7.

21 A That is a check, I believe probably a Yeargin
22 check, that is a Yeargin check issued to pay for, in this
23 instance, an exhaust fan.

24 Q And the next page?

25 A That is a vendor invoice from Comfort Zone

1 Systems, Inc.

2 Q And the following page?

3 A That is a purchase order issued by Yeargin.

4 Q And the following page?

5 A That is an exemption certificate signed by Yeargin
6 that was given to Comfort Zone so that they could buy that
7 material tax-free.

8 Q And it's your conclusion that by taking all of
9 those documents together, they relate to the purchase by
10 Yeargin of the item referenced on Page 1 of R-7?

11 A That's correct.

12 Q And lastly, Exhibit R-8?

13 A Exhibit R-8 is a copy of my audit Schedule 1
14 showing a purchase of a--a radio rental from Protocol--
15 Protocount.

16 Q And Page 2?

17 A Page 2 again is a purchase order issued by Yeargin
18 for the radios, actually, they're probably rental radios, I
19 believe.

20 Q Now, would you consider this as a taxable item
21 because it was converted to real property or for some other
22 reason?

23 A No. This would have been included because it was a
24 piece of equipment needed for Yeargin to perform their job.

25 It did not become incorporated into the facility, did not

1 become a piece of the manufacturing equipment, was merely
2 used to expedite--to perform their job.

3 Q But you determined that Yeargin was the consumer of
4 this--

5 A Based on the information I have in front of me,
6 Yeargin was determined to be the consumer of the radios.

7 Q And in your revisions to your schedules, you were
8 given no documentation or explanation that satisfied you that
9 this would not have been a taxable item; is that correct?

10 A That's correct.

11 Q The following page, Page 3?

12 A Page 3 is a check from Yeargin to Protocol paying--
13 paying a bill.

14 Q And the next page?

15 A The next page is the invoice from Protocol for the
16 talkie--walkie-talkies, it looks like.

17 Q And again, this--all of these documents would have
18 been taken there to allow you to make a decision that they
19 all related to the items listed on Page 1?

20 A That's correct.

21 Q Was the explanation of the various corporate
22 entities explained to you during the term of the audit as
23 we've been witness to during the first two witnesses of the
24 petitioners?

25 A Briefly, yes. Then--during our opening conference,

1 Mr. Wood provided detailed information on the happenings back
2 in May, the need to expedite the construction of the plant, a
3 brief description on how AMPAC related to the various other
4 entities.

5 WECCO was kind of a late comer, it probably came on
6 board and started seeing purchases some time in mid-'89.
7 Prior to that, WECCO was not in existence.

8 Q Particularly, I'm interested in your understanding
9 of the relationship between Yeargin, Inc. and United
10 Engineering. Was that explained at the time of the audit?

11 A It was my understanding that they were the
12 contractor building the facility.

13 Q And no differentiation between the names?

14 A You--when I looked at it, we--United Engineering,
15 we looked at as being the parent, Yeargin merely being a
16 related company, if you will, a wholly-owned company who
17 actually did the work. We didn't feel like that was really
18 important, who--the relationship between Yeargin and United
19 Engineers.

20 Q When did you first get an opportunity to review the
21 contract of United Engineers and PEPCON?

22 A Mr. Woods provided, I believe you, with a copy and
23 that's when I first saw the actual contract.

24 Q And I think if you'll refer to Exhibit R-4--5. Is
25 that a copy of that letter and the attachments that you

1 received when you became aware of the contract?

2 A The letter's dated May--or November 16th, 1994.
3 That would have been the first time I saw an actual contract.
4 We had discussed the scope of what Yeargin was doing, that
5 they in fact were the contractor, they were buying everything
6 and responsible to provide work, labor, whatever was needed
7 to get that plant going.

8 MR. FRANCIS: Okay. No further questions.

9 THE COURT: Cross-examination, Mr. Peterson?

10 MR. PETERSON: Sure.

11 CROSS-EXAMINATION

12 BY MR. PETERSON:

13 Q As I've read your various exhibits here, sir, the
14 taxpayer in this case, Yeargin, was not only assessed
15 additional amounts in 1992 over what had been paid, it was
16 also assessed penalties and interest; is that--is that true?

17 Take a look at your--

18 A Looking at my exhibit, it does show some penalties
19 and interest.

20 Q Now, let me--let me ask you just a general question
21 because you went through an example of some concrete and I
22 want to make sure I understand your interpretation of this
23 thing. Let's--let's assume that I want to do a concrete
24 driveway at my house; okay?

25 A Okay.

1 Q So, I hire a guy to come in and put down some forms
2 and then grade it and smooth it out; okay?

3 A Uh huh.

4 Q I buy the concrete.

5 A As the homeowner, if you will.

6 Q As the homeowner, I buy the concrete; who pays the
7 sales tax, me or the laborer?

8 A The invoice would be to you, the homeowner, you
9 would pay the tax.

10 Q Now, in--the--the audit was completed actually in
11 1992, and you have in front of you Exhibit 2, which is a
12 stipulation, just up above your right hand there, not
13 respondent's, petitioners' exhibit. Up above your right
14 hand, right, the other--

15 A Right hand, the other right, yeah. Okay.

16 Q Now, was that stipulation ever cleared with you
17 before it was executed?

18 A That is generally handled by the audit managers and
19 the attorney general's office.

20 Q Okay. So you were not consulted?

21 A No.

22 Q All right. In 1995, Mr. Layder (?) on behalf of
23 numerous taxpayers, including Yeargin, Inc. and St. George
24 Steel, Standard Industrial and others, was involved in trying
25 to--and Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU was trying to resolve these audits. In
Machine-generated OCR, may contain errors.

1 June of 1995, did--did you have any involvement in--in the
2 process by--by which it was attempting to resolve these
3 various audits?

4 A We had--I was involved in several meetings with Mr.
5 Layder, mostly as a witness function.

6 Q Okay. I have noticed that Mr. Layder offered to
7 provide--I'm not asking you to testify about this, but I'm
8 asking you to accept this, that in fact, of the invoices that
9 the auditing division had claimed were invoices issued by
10 Yeargin, that \$779,786.45 worth of those purchases are in
11 fact purchase orders in the name of PEPCON Production, Inc.
12 and/or WECCO rather than Yeargin and the offer to make those
13 available to the attorney general's office.

14 Did--did you ever review those to see if in fact
15 invoices that you in your audit had determined were the
16 responsibility of--of Yeargin, were in fact invoices or
17 purchase orders issued in the name of PEPCON-WECCO?

18 A I don't recall.

19 Q If in fact these invoices were issued by PEPCON and
20 not by Yeargin, would that change your opinion as to the
21 responsibility for the sales tax?

22 A Possibly it may have been that they were subject to
23 the manufacturing exemption and the fact--who pays for them
24 would be a moot issue if they're qualified for manufacturing
25 exemption.

1 Q All right. But let's assume that they're not
2 otherwise exempt, but that the purchase order is that PEPCON
3 orders some steel and it's delivered to the site pursuant to
4 that purchase order; does Yeargin have any responsibility?

5 A If PEPCON paid for it, we would look at PEPCON as
6 being the one who owned any tax if due.

7 Q What if PEP--and by paid for it, you mean paid for
8 it ultimately or do you mean paid for it directly, or--

9 A Yeah. We'd look at the paper trail, who issued the
10 check, who--underneath that check, who negotiated for the
11 sale, who was involved in the transaction, who issued the
12 purchase order.

13 Q Okay.

14 A We key heavily to who paid for it, we also look at
15 who issued an exemption number, whose exemption number was
16 being issued. Was it Yeargin's exemption number or was it
17 PEPCON's exemption number.

18 Q Okay.

19 A That all enters into it.

20 Q And you certainly would look at who--who actually
21 issued the purchase order, would you not?

22 A That would be one criteria. Who issued the check
23 is actually--can be very important at times. My observation
24 was that--the review of Yeargin's records, was that the
25 purchase order and the checks were one and the same, Yeargin

1 would issue a purchase order, they would also cut a check.

2 Q All right. And would it be the same for PEPCON, if
3 PEPCON issued a purchase order, that PEPCON would likely
4 issue the check?

5 A More than likely would have issued the check,
6 that's correct.

7 MR. PETERSON: I have no further questions. Thank
8 you, Mr. Jacobsen.

9 THE COURT: Further questions, Mr. Francis?

10 MR. FRANCIS: Just one follow-up.

11 REDIRECT EXAMINATION

12 BY MR. FRANCIS:

13 Q Mr. Jacobsen, if indeed you did come across
14 invoices with PEPCON, on which audit would a PEPCON invoice
15 appear?

16 A It should be on the PEPCON audit.

17 Q And did you actually have a PEPCON audit or would
18 it have been the WECCO audit?

19 A We--the audit would have been against Western
20 Electro Chemical; WECCO.

21 Q Because your understanding about the relationship
22 between PEPCON and WECCO--

23 A Correct.

24 Q --is the same as has--

25 A Correct.

1 Q --been explained today?

2 A Correct.

3 MR. FRANCIS: No further questions.

4 We rest, your Honor.

5 THE COURT: Mr. Jacobsen, all of the items which
6 you have shown on the invoices on your audit schedule were
7 both purchase orders and checks, on the ones you checked, did
8 they come from Yeargin? They're--they're on Yeargin's audit
9 report?

10 THE WITNESS: Yes, they were. Both purchase orders
11 and the checks were issued by Yeargin.

12 THE COURT: Did you--

13 THE WITNESS: I found very few exceptions where
14 Yeargin would issue a purchase order and no--I found no
15 exceptions where a purchase order would have been issued by
16 Yeargin and have a WECCO check.

17 THE COURT: You--you did not find any where
18 purchase orders were issued by WECCO and checks by Yeargin?

19 THE WITNESS: No. I did not find that.

20 MR. PETERSON: May I have a follow-up?

21 THE COURT: Sure.

22 RECROSS-EXAMINATION

23 BY MR. PETERSON:

24 Q In fact, you did an--an audit, did you not, sir, as
25 you have--as you have described it and you did not look at

1 every purchase order and every check because of the warehouse
2 nature of this?

3 A I looked at every purchase order, yes, I did.

4 Q All right.

5 A I did a hundred percent review.

6 Q Is it your testimony then and I want to--because
7 the back-up is not--obviously not here; is it your testimony
8 that none of the invoices that--that were part of the
9 assessment against Yeargin were in fact issued by PEPCON?
10 Can you categorically state that?

11 A Yes.

12 MR. PETERSON: Okay.

13 THE WITNESS: Barring human error.

14 MR. PETERSON: Well, I'm not accusing you of
15 malfeasance, I'm asking you a factual question.

16 THE WITNESS: Barring human error.

17 THE COURT: But he did make one mistake 20 years
18 ago that he has forgotten about.

19 Anything further?

20 MR. FRANCIS: No.

21 THE COURT: Thank you. You may step down, Mr.
22 Jacobsen.

23 MR. FRANCIS: No further witnesses on behalf of the
24 respondent.

25 Digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, BYU.
MR. PETERSON: We rest.

1 THE COURT: Okay. Arguments? Do you want to argue
2 it or submit it or--

3 MR. PETERSON: No, I don't to argue. I think it's
4 pretty clear, isn't it?

5 THE COURT: Well, let--let me ask you your theory,
6 Mr. Peterson, 'cause that's--that, I guess frankly that's
7 what I'm struggling with. You've introduced a major contract
8 which says, well, this will really be the responsibility of
9 WECCO--

10 MR. PETERSON: Uh huh.

11 THE COURT: --but they've introduced in a--numbers
12 of transactions which says, notwithstanding that, that
13 Yeargin did in fact enter into contracts for--to provide
14 materials, there is one contract there with Western Concrete
15 Rock, whatever--whatever it is.

16 MR. JACOBSEN: Western Rock Products.

17 THE COURT: So, Yeargin entered into contracts,
18 they issued purchase orders and they wrote the checks to pay
19 for those products and the installation contract, they were
20 also the party that installed them and--

21 MR. PETERSON: No. Not in all cases, that's not
22 even true, 'cause we have numerous subcontracts.

23 THE COURT: Well, they--they purchased the products
24 and I think there's no showing that--that anyone else

25 installed them.

1 MR. PETERSON: Yeah, there's a subcontract that's
2 part of their evidence.

3 THE COURT: With--with whom?

4 MR. PETERSON: With Western Rock Products,--

5 UNIDENTIFIED SPEAKER: Services.

6 MR. PETERSON: Western Services.

7 (Inaudible)

8 MR. PETERSON: That was a subcontract.

9 THE COURT: Well, my--my understanding was it was
10 basically a furnish and install, that is that--

11 MR. PETERSON: The subcontract is what it is, your
12 Honor, it's their exhibit and it's a subcontract to do
13 concrete work.

14 UNIDENTIFIED SPEAKER: No.

15 MR. PETERSON: It's not?

16 UNIDENTIFIED SPEAKER: It is not. It was a supply
17 only contract.

18 MR. PETERSON: Okay.

19 THE COURT: The--the one with, yeah, with Western
20 Rock, they supplied the products, but as I interpreted that,
21 Yeargin installed it, therefore, they converted it.

22 UNIDENTIFIED SPEAKER: I think that's right.

23 MR. PETERSON: I don't know, your Honor, I haven't
24 seen it before, it says whatever it says.

25 THE COURT: Well, they--they purchased it and I

1 guess maybe a better way of looking, there's--there's no
2 evidence that it was for re-sale.

•3 MR. PETERSON: I don't think anybody's claiming
4 here about sales for re-sale, I'm certainly not.

5 THE COURT: Okay. Under those circumstances, how
6 does it--

7 MR. PETERSON: Well--

8 THE COURT: Why would tax not be imposed on
9 Yeargin?

10 MR. PETERSON: Because you have to look at all of
11 the paper, your Honor. You have to look at the contract and
12 the relationship as it's been described to you and the fact
13 that Yeargin did not purchase materials for its own account.
14 It acted as an agent for the owner.

15 THE COURT: What--what--what says that it has to be
16 purchased for its own account to make it taxable? What
17 statute or what rule says it has to be purchased for its own
18 account?

19 MR. PETERSON: I believe that--I believe that's a
20 fair reading and I believe that the stipulation and the
21 contract also make it abundantly clear that title to
22 materials purchased does not go to Yeargin, it goes directly
23 to the owner. That's what the contract says, that's what the
24 stipulation says.

25 THE COURT: But--but their actions, very candidly,

1 appear to be contrary to the contract.

2 MR. PETERSON: I don't think so, not acting as an
3 agent.

4 THE COURT: Well, I--I think that's the issue.

5 MR. PETERSON: Well, that's what the contract says,
6 they act as an agent, and that's what the stipulation--I
7 mean, the stipulation which has been agreed to by the State
8 clearly--

9 THE COURT: They don't agree that's its meaning--
10 the meaning of the stipulation.

11 MR. PETERSON: Well, I'm contending that the
12 language of the stipulation--

13 THE COURT: I--I understand that's your position.

14 MR. PETERSON: Yeah. And I have nothing fancier in
15 mind than that. Okay? I have no clever, intricate, non-
16 obvious argument.

17 THE COURT: All right. Okay. What--what was
18 Yeargin's role under your theory?

19 MR. PETERSON: Well, the role important to this
20 issue was acting as a procurement agent.

21 THE COURT: Okay. But what did they do more than
22 that? What--what was their overall role in this?

23 MR. PETERSON: They didn't have--they had numerous
24 roles, but the role in question is whether or not the
25 purchases were made by WECCO and the materials received for

1 WECCO or whether they were purchased by Yeargin.

2 THE COURT: Okay. But very candidly, under the
3 sales tax law, to me, I think the critical issue under the
4 statutes and the rules is, who converted it to realty? That-
5 -that's what it really boils down to. Who converted it to
6 realty?

7 MR. PETERSON: Well--

8 THE COURT: They--they purchased it and that's only
9 an exempt purchase if they re-sell it.

10 MR. PETERSON: Your Honor, I--

11 THE COURT: And--

12 MR. PETERSON: --I'd disagree with you, but if
13 that's your interpretation, I suspect that's the way you're
14 going to rule.

15 THE COURT: Well, I--I'm trying to--I'm trying to
16 work my way through it.

17 MR. PETERSON: That's why I asked him the question
18 about the--about the--the driveway, okay?

19 THE COURT: Uh huh.

20 MR. PETERSON: The fact that somebody was there
21 converting it, right? By--by pouring it, vibrating it,
22 smoothing it out, doesn't make them liable for sales tax.

23 THE COURT: But that's where the sales tax law
24 draws a big distinction, a services only contract is exempt
25 from taxation; that is, if I hire a carpenter to build me a

1 house and I buy the materials, the--the carpenter's wages are
2 not subject to sales tax, but all of the lumber that he uses
3 is subject to it and if I buy it, I pay sales tax when I buy
4 it.

5 MR. PETERSON: That's exactly right.

6 THE COURT: And--and if I buy it exempt, then I'm
7 claiming that I'm reselling it, and if I don't resell it,
8 then I've committed fraud or--

9 MR. PETERSON: No, that's--well--

10 THE COURT: --or at least it's taxable to me.

11 MR. PETERSON: My point, your Honor, is maybe the
12 same as yours. If WECCO is actually the entity--which it
13 was, WECCO-PEPCON, because it changed over time, that is
14 buying the materials, then they are responsible for the sales
15 tax on it, not Yeargin and the fact that they have Yeargin
16 out, acting as their agent effecting these sales in some
17 instances, doesn't make Yeargin responsible any more than if
18 I asked you to go buy for me, say I want you to go over and
19 arrange for me to get some concrete and have it dumped in my
20 driveway, you go tell them I want it, but it's my concrete
21 and I ultimately pay for it, I'm the guy who's subject for
22 the sales tax, not you.

23 THE COURT: Okay. But if they're acting as an
24 agent, doesn't agency law require that it be billed to them
25 and that they pay for it?

1 MR. PETERSON: No. There has to be a written
2 agency contract, which we have shown you.

3 THE COURT: Not--not sure I agree with that, but I--
4 --what's your position of taxability, Mr. Francis?

5 MR. FRANCIS: Well, if I may, I did have a closing.

6 THE COURT: If--if they were just acting as an
7 agent.

8 MR. FRANCIS: Even--my bottom line is that even if
9 they were an agent, agency law says that either in an
10 undisclosed or partially disclosed principal has an
11 obligation to the agent to indemnify them for any amounts for
12 which they become liable within the scope of the agency. It
13 does not release the agent from the liability, whether it's a
14 tax, whether it's a tort liability in furtherance of--of the
15 agency contract, the agent isn't liable, although they may
16 have redress by going back to the principal to be
17 indemnified, that is one of the duties of the principal from
18 agency--in agency law. Now, that's if an agency exists.

19 We've seen the impressions of both witnesses that
20 an agency contract existed, but we haven't seen a written
21 agency contract between Yeargin and United Engineers or
22 Yeargin and anybody else. And so my first argument is that
23 the agency certainly is not documented by evidence. It's the
24 impressions of the two witnesses.

25 Yeargin was the one and I think that the best

1 evidence rule and--and the contract itself show that Yeargin
2 did indeed purchase items and from Mr. Burke's testimony, I
3 think you'll find the statement in the record, as--as my
4 recollection shows, that Yeargin was the one who provided the
5 services of constructing the plant.

6 So, if Yeargin purchases sticks or tangible
7 personal property and then provides the services which
8 installs them in--in the real property, we have the classic
9 case of real property contract. I believe the evidence that
10 is of record will indeed identify that.

11 Am I--

12 THE COURT: That's why I was trying to identify
13 what Yeargin really did in this whole thing.

14 Mr. Peterson?

15 MR. FRANCIS: Well, my notes said--show that Mr.
16 Burke stated Yeargin did the construction, that it was not
17 United Engineers.

18 THE COURT: They were the merit shop construction--

19 MR. FRANCIS: Yes.

20 THE COURT: --or whatever his term was.

21 MR. FRANCIS: Whether they were union or not, the
22 workers, they took the property and put it into--to the
23 plant.

24 MR. PETERSON: And just so you understand, we're

25 not claiming anything for any kind of a magical distinction

1 between United and Yeargin. They're all one company for all
2 practical purposes.

3 THE COURT: Well, and that's--and that's why, you
4 know, I--

5 MR. FRANCIS: Yeah, well, I mean, we're not fooling
6 around with that.

7 THE COURT: --I usually try to get down to the real
8 nuts and bolts of it.

9 MR. FRANCIS: Yeah. The last thing that I would--
10 beyond that that I would like to address is the continual
11 focus on the stipulation that was entered into by Mr. Woods
12 and myself on behalf of our clients.

13 The date of the stipulation was April 25th, 1994,
14 and the date that I received the contract which seemed to be
15 an opposite to that stipulation was November 16th, 1994, both
16 of those exhibits are of records. Without having the
17 contract, I relied upon the representations of the petitioner
18 that what they said was true in regard to the passing of
19 title and I renew the arguments that I put into my memorandum
20 in opposition to the motion in limine and encourage the Court
21 to review the case law that is listed there, that a trial
22 judge is not bound by stipulation of facts when indeed it's
23 based on mistake.

24 And the further evidence that was provided and the
25 document shows indeed that Yeargin did purchase--at least

1 that's what the paper says and that's what the checks say and
2 I think Mr. Jacobsen's testimony ought to be taken as the
3 best evidence of that as well.

4 THE COURT: Well, just--just so you're clear where
5 I was on that stipulation, my--my review of the stipulation
6 and the reason I did not grant the motion in limine--well,
7 part of it was because I felt there were material--

8 MR. FRANCIS: Sufficient--

9 THE COURT: --material facts which were still at
10 issue was one reason. I very frankly also in reading it,
11 felt that the stipulation did not foreclose the possibility
12 that United Engineering or Yeargin may have--may have,
13 itself, purchased materials for the construction of the
14 facility.

15 MR. FRANCIS: And all we're asking is--

16 THE COURT: So--

17 MR. FRANCIS: --an evaluation of the evidence that
18 was submitted today would lead to the conclusion--

19 THE COURT: So, I--very frankly, I don't think I
20 need to go back and try to modify what you did, because I
21 don't think the stipulation really foreclosed that
22 possibility. I mean, it didn't state that there were no
23 purchases for the benefit of Yeargin.

24 MR. FRANCIS: Well, to the extent that it provides
25 any guidance, I renew the arguments made in that memorandum.

1 And we would submit that the audit should be sustained in its
2 entirety because the petitioner, frankly, hasn't met its
3 burden of proof. Even the witnesses that were provided could
4 not defeat the presumptions of the documentary and
5 testimonial evidence of the respondent because they were not
6 on site and at least did not have a familiarity with the
7 specific transactions in the audit to be able to discount
8 them above and beyond a preponderance of the evidence. And
9 we would submit it on that basis.

10 THE COURT: Anything further, Mr. Peterson?

11 MR. PETERSON: No.

12 THE COURT: Okay. Thank you.

13 You've both been here enough to know that I take
14 the matters under advice and refer them to the Commission,
15 discuss the evidence with the Commission and they will issue
16 a ruling 30 days, plus or minus a little.

17 Thank you.

18 MR. PETERSON: Whatever. Okay.

19 MR. FRANCIS: Okay. Okay. Thanks a lot.

20 THE COURT: We are adjourned.

21 (Whereupon, this hearing was concluded.)

22

23

* * *

C E R T I F I C A T E

STATE OF UTAH)
) ss.
 COUNTY OF SALT LAKE)

I, TONI FRYE, do hereby certify that the foregoing pages, numbered 1 through 123, contain a true and accurate transcript of the electronically recorded proceedings and was transcribed by me to the best of my ability from the cassette tapes furnished to me.

DATED: July 6, 1998

Toni Frye

 TONI FRYE, Transcriber

I, KELLY THACKER, Certified Court Transcriber, and Notary Public for the State of Utah, do hereby certify that the foregoing transcript prepared by Toni Frye was transcribed under my supervision and direction.

Kelly Thacker

 KELLY THACKER

My Commission Expires:

11-5-2000

