

STATE OF NEW YORK  
STATE TAX COMMISSION

Application

In the Matter of the ~~XXXXXX~~

of

CLIMAX MANUFACTURING COMPANY

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period June 1, 1968  
through August 31, 1970.

State of New York  
County of Albany

Martha Funaro , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 16th day of October , 1974 , she served the within  
Notice of Decision (or Determination) by ~~(CERTIFIED)~~ mail upon Climax Manufacturing  
Company ~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Climax Manufacturing Company  
Castorland  
New York 13620

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~xx~~) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

16th day of October , 1974.

Janet Mack

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

Application

In the Matter of the ~~Reduction~~

of

**CLIMAX MANUFACTURING COMPANY**

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of **Sales & Use**  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Periods June 1, 1968  
through August 31, 1970.

State of New York  
County of Albany

**Martha Funaro**, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the **16th** day of **October**, 1974, she served the within  
Notice of Decision (or Determination) by ~~(certified)~~ mail upon **Joseph H. Murphy, Esq.**

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: **Joseph H. Murphy, Esq.**  
**Hancock, Estabrook, Ryan, Shove &**  
**Hust, Esqs.**  
**One Mony Plaza, Syracuse, New York 13202**  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

16th day of **October**, 1974.

*Janet Mack*

*Martha Funaro*



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**Dated:** Albany, New York

**October 16, 1974**

**Climax Manufacturing Company  
Castorland  
New York 13620**

**Gentlemen:**

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 & 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 Months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**L. Robert Leisner**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
CLIMAX MANUFACTURING COMPANY	:	
for a Revision of a Determination or	:	DETERMINATION
for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax	:	
Law for the Periods June 1, 1968	:	
through August 31, 1970.	:	

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Applicant, Climax Manufacturing Company, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods June 1, 1968 through August 31, 1970.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on June 28, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Joseph H. Murphy, Esq. and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Is applicant, Climax Manufacturing Company, exempt from New York State and local sales and compensating use taxes on the purchase of parts with a useful life of more than one year installed in making repairs to a dam used in the operation of a paper plant and to two boilers located in said plant under the provisions of

subdivision (a)(12) of section 1115 of the Tax Law of the State of New York?

FINDINGS OF FACT

1. The taxpayer, Climax Manufacturing Company, timely filed New York State sales and use tax returns for the periods June 1, 1968 through August 31, 1970.

2. A Notice of Determination of sales and use taxes (and penalties) for the periods June 1, 1968 through August 31, 1970, was issued on July 1, 1971, against the taxpayer under Notice No. 90745760.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax.

4. Climax Manufacturing Company is a corporation organized and existing under the laws of the State of New York. It has a division in Castorland, New York, known as the Carthage Paper Makers Division. Climax Manufacturing Company makes folding paper boxes. It utilizes boxboard, a type of flexible paperboard which lends itself to creasing. This constitutes the output of its Carthage Paper Makers Division.

5. Carthage Paper Makers, Inc. was a plant of about one hundred thousand square feet. It was made up of a paper machine building in which its manufacturing operation was conducted, a shipping building of about two thousand square feet, with an office connected to the paper machine building by a common wall and doors which are generally left open and six small offices totaling one thousand square feet occupied by supervisory personnel

located on the second floor of the paper machine building, adjacent to the shipping building.

6. Facilities for providing heat for the persons employed by the applicant were not needed. The paper machine building was more than adequately warmed by the waste heat from the paper manufacturing operation. The temperature resulting from the same waste heat was adequate to provide warmth for the employees in the shipping building. Since the offices for supervisory personnel were adjacent to the paper machine building, the heat from the latter was adequate to maintain the necessary warmth in these rooms.

7. There were space heaters provided in the shipping building which were serviced from the boilers in the paper machine building. In cold weather these space heaters provided some warmth for the people working in the shipping area, but mainly the heaters warmed and tempered and dried the air coming in from the out-of-doors so that when it flowed into the paper machine area, it could absorb water vapor from the paper drying operation.

8. The entire electrical output of the applicant's operation was sold to Niagara Mohawk. The electrical power generated by the applicant was integrated into Niagara Mohawk's system and the applicant's power needs were met by purchasing power from Niagara Mohawk. Niagara Mohawk collected no tax on the power which applicant used in its production operation, because it was exempt under section 1115 of the Tax Law. However, it did collect

a tax from the applicant on the sale of that portion of electricity which it used in its nonmanufacturing operations in accordance with the procedure outlined in New York State Tax Department publication, S.T. 214 (Booklet No. 4, page 13).

9. The paper-making process, conducted in the machine building, involved the reuse of various types of waste paper and boxes collected in the area of Metropolitan New York City. This material was shipped to Carthage Paper Makers, Inc. soaked in water and softened to the point where the individual fibers were separated, making what is known as a "slurry", a mash or a very thick liquid.

At various stages of the manufacturing process, the slurry was conveyed by water to the paper forming machines, where it was filtered through wire mesh screens on rotating cylinders. The water was removed, the fibers being retained to form a mat or a large sheet of paper, which progressed as a continuous web from the forming area into the pressing or water removal area, thence into the drying area and, finally, to an area where the finished board was wound into rolls or cut into sheets for shipment.

10. Water and waterpower are key factors in the applicant's operations. In addition to being used in conveying the slurry through the processing chain, it was the source of electricity through hydroelectric turbines. It was also the source of steam used in the electrical generating and manufacturing operations. Finally, it provided the primary source of fire protection.

11. The source of the water for applicant's plant was the Black River. A dam had been constructed in the Black River by New York State in the mid-nineteenth century to provide a navigable waterway from Carthage, New York, to Boonville, New York, to connect with a canal which ran from the Barge Canal to Boonville. Abundant water is a necessity in the manufacture of paper and several companies built plants along the banks of the river to avail themselves of this supply.

Around the turn of the century, the State abandoned the dam, it having served its purpose as far as navigation was concerned. However, because the dam was essential to their operations, the paper companies agreed among themselves to maintain it. By 1957, all the companies except applicant had abandoned their activities in the area. Since then, the dam has been the property of applicant and maintained solely by it.

The dam itself was a concrete structure or wall about four feet high from base to crest, crossing the major portion of the Black River. Water of the Black River was impounded behind the dam in order to create a reservoir. This insured the availability of a continuous supply at all times because, while there was an excess flow of water during some periods of the year, during many months there would not be a sufficient depth of water in the Black River to provide the services needed for paper making without the dam.

12. Applicant drew 1.5 to 1.75 million gallons of water from the river each day. While its plant operations required many

times more water than that, most of which was supplied by recirculation within the plant, the amount drawn from the dam was necessary to replace unavoidable losses from manufacturing and recycling. Furthermore, the dam impounded a supply of water for fire fighting and the flow of water resulting from the level created by the dam was used by a wheel turbine to generate electrical power.

Water flowed over the dam into a flume, about thirteen feet deep. A centrifugal pump drew it from the flume and conveyed it by pipe into the manufacturing area, where it was fed to the boilers. The flume also provided the storage capacity for the elaborate system of fire protection regarded by the underwriters as the primary source.

Finally, the flume was a source of hydroelectric power. A water wheel turbine was submerged in the flume with a vertical shaft reaching above water into a generator house constructed over the flume. The shaft was connected to an electric generator. The water level on the inlet side of the turbine was about seventeen feet higher than the water on the outlet side of the turbine. This volume of water falling seventeen feet provided mechanical energy to operate the generator and produce electrical power.

13. There were two large boilers in applicant's plant which generated fifty-five thousand pounds of steam an hour at a pressure of three hundred pounds per square inch. The boilers were about twenty-five feet wide, forty feet long and forty feet high. The interior of each boiler was interlaced with tubes or

pipes. Grates were located at the base of each boiler and automatically supplied with coal. This provided the heat which caused the water in the pipes within the boilers to turn to steam.

The steam generated by the two boilers was carried by piping systems through two separate turbines. In one turbine the steam rotated a shaft connected to an electrical power generator, which was another source of electricity. The other turbine provided mechanical power to drive the paper forming and drying machinery.

When the steam had passed through the turbines and provided the electricity and mechanical power, it was used in the drying section of the plant to remove the moisture from the paper. It also heated chemicals which were used in the manufacturing process. Finally, it heated water which was used as an affluent to convey the paper fibers through the paper machine.

14. Most of the water used in the plant resulted from the condensation of steam employed in the manufacturing process. Accordingly, when the steam had served the purposes described above, it had to be converted to water by condensation. To accomplish this, the steam passed through condensers, receivers, preheaters and back to the boilers. During the winter or the cold season, an infinitesimal amount of the steam--less than one percent--was condensed by passing through radiators, one located in each of the six offices described above.

15. During the sales tax periods in question--those ending August 31, 1968, November 30, 1969 and August 31, 1970, applicant made major repairs to the dam and to the two boilers. Repairs to the dam consisted of concrete, reinforcing rods and similar parts, replacement of which was necessitated by the erosion of the dam by high water, ice, etc. Repairs to the boilers involved the installation of new piping within the boiler proper and of new coal grates. All items installed had a useful life or more than one year. They were not tools or supplies.

#### OPINION

The boilers and the parts for their repair were machinery and equipment for use and consumption directly and exclusively in the production of tangible personal property and electricity for sale. We view the condensing for return to the water receivers and preheaters and ultimately to the steam boilers as an integral part of the manufacturing process. Section 1115(a)(12) of the Tax Law.

The dam and the materials used in its repair were not machinery or equipment. The materials purchased and installation performed are taxable as "maintaining, servicing or repairing" of "real property and land" as such terms are defined in the Real Property Tax Law. Section 1105(c)(3) and (5) of the Tax Law; section 566 of the Real Property Tax Law.

#### CONCLUSIONS OF LAW

A. The purchases of materials and parts with a useful life of more than one year for the boilers were not subject to sales and use taxes. Section 1115(a)(12) of the Tax Law.

B. The purchases of the materials and parts for the dam were subject to sales and use taxes. The dam was not machinery and equipment. Section 566, Real Property Tax Law.

C. The taxpayer acted in good faith throughout this matter. All penalties are cancelled.

D. The deficiencies in sales and use taxes shall be recomputed in accord with this determination.

E. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York  
October 16, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER