

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CELOTEX CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
March 1, 1969 through February 29 1972.

State of New York  
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within

Notice of Determination by ~~(certified)~~ mail upon Celotex Corporation

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Celotex Corporation  
1500 North Dale Mabry Highway  
Tampa, Florida 33607

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

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

Sworn to before me this

26th day of August, 1977.

Marsina Donnini

Janet Masch

STATE OF NEW YORK  
STATE TAX COMMISSION

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CELOTEX CORPORATION

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March 1, 1969 through February 29, 1972

State of New York  
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within

Notice of Determination by ~~registered~~ mail upon Martin F. Holleran, Jr., Esq. &

Colin T. Naylor, III Esq. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
Martin F. Holleran, Jr. & Colin T. Naylor, III, Esqs. of  
as follows: Hinman, Howard & Kattell Esqs.  
724 Security Mutual Building  
Binghamton, New York 13901

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

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

Sworn to before me this

26th day of August, 1977

Marsina Donnini

Janet Mack



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

August 26, 1977

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Celotex Corporation**  
**1500 North Dale Mabry Highway**  
**Tampa, Florida 33607**

**Gentlemen:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1250** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**PAUL B. COBURN**  
**Supervising Tax**  
**Hearing Officer**

cc: Petitioner's Representative  
  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
CELOTEX CORPORATION	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for the	:	
Period March 1, 1969 through February 29,	:	
1972.	:	

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Applicant, Celotex Corporation, 1500 North Dale Mabry Highway, Tampa, Florida 33607, applied for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1969 through February 29, 1972. (File No. 01808).

A formal hearing was held at the offices of the State Tax Commission, Binghamton, New York, on October 8, 1974, before L. Robert Leisner, Hearing Officer. Applicant appeared by Martin F. Holleran, Jr., Esq. and Colin T. Naylor, III, Esq. and the Sales Tax Bureau appeared by Saul Heckelman, Esq. (James A. Scott, Esq. of counsel).

ISSUE

Whether receipts from the issuance of roofing bonds were subject to sales tax.

FINDINGS OF FACT

1. Applicant, Celotex Corporation ("Celotex"), filed New York State sales and use tax returns for the period March 1, 1969 through February 29, 1972.

2. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period March 1, 1969 through February 29, 1972, was issued against Celotex on June 7, 1973, under Notice No. 90,750,571, assessing sales tax due on receipts from sales of roofing material guarantees, as well as penalty and interest thereon.

3. Celotex applied for revision of said determination on August 8, 1973.

4. Celotex manufactures roofing material used in the construction of built-up roofs. It sold such material during the period March 1, 1969 through February 29, 1972, under its "Barrett" trade name. A build-up roof is constructed of several plies or layers (usually four) of felt, each ply being coated with hot asphalt or pitch. This type of roof is commonly installed on relatively flat buildings of considerable size, such as hospitals, schools, shopping centers, public buildings and factories.

5. Celotex offers a form of guarantee called a "Barrett Roofing Bond" for the protection of owners of buildings on which Barrett roofs have been installed. The Barrett Roofing Bond has been issued on Barrett roofs by Celotex and its business predecessors since 1916. In 1971, Celotex introduced a new type of roofing

inspection and service contract which it issues in addition to the Barrett Roofing Bond. The taxability of the inspection and service contract, however, is not at issue in this proceeding.

6. The Barrett Roofing Bond is ordinarily issued on new construction, pursuant to job specifications drawn up by the owner's architect, which require that a bond be obtained on the built-up roofing. Several other building material manufacturers also offer roofing bonds.

7. In the case of the Barrett Bond, the general contractor subcontracts the roofing work to a contractor who has the capacity to install the Barrett roof and obtain the Barrett Roofing Bond from Celotex. The roofing contractor pays Celotex for this bond according to the number of square feet of roofing involved. During the audit period, the charge was approximately \$3.00 per 100 square feet. The bond is issued by Celotex as principal, with Aetna Casualty and Surety Company, as surety, and indemnifies the owner of the building. Celotex pays a premium to Aetna for its role as surety.

8. Upon obtaining a bond from Celotex, the roofing contractor forwards it to the general contractor, who then forwards it to the architect, who delivers it to the owner of the building. If a contractor is unable to furnish a bond as agreed under the contract, it has not met the job specifications.

9. Celotex has entered into "Approved Roofing Contractor Agreements" with certain roofing contractors whom it has found to be reliable. Under these agreements, Celotex agrees, among other things, to issue a bond (or inspection and service contract, as the case may be), if the contractor gives Celotex notice prior to commencing work on the roof, submits a Request for Inspection of the job by a Celotex field representative, and gives Celotex a written Notice of Completion of the job. The Notice of Completion must include a two-year guarantee by the contractor to Celotex. Under the bond, Celotex guarantees to repair the roof if it leaks under ordinary wear and tear during the term of the bond. The bond excludes damage caused by hurricanes, tornadoes and other unusual natural phenomena. The face value of the bonds issued during the audit period was \$10.00 for every 100 square feet.

10. Upon receiving a report of a leak occurring in a roof that is under the Barrett Roofing Bond, Celotex sends one of its field representatives to inspect the roof to determine the cause of the condition. If the field representative finds that the cause is within the coverage of the bond and it is determined that the repair is not the responsibility of the contractor who installed the roof under the two-year agreement contained in the Notice of Completion, Celotex hires a contractor to make the repairs. If the cost of repair is minimal, only one contractor is consulted. If the cost is

more substantial, bids are obtained from several roofing contractors. Payment for the repairs is made by check or, if the contractor buys materials directly from Celotex, by credit memorandum. The roofing contractor who Celotex hires to make repairs may or may not be one of the approved contractors for whom Celotex will issue roofing bonds.

11. Celotex hires contractors to make repairs without prior inspection by one of their field representatives in emergency situations. If it is later determined that the cause of the emergency was not within the coverage of the bond, Celotex sends the invoice for the emergency repair to the owner. The Barrett Roofing Bond also permits the owner to make temporary repairs if there is an emergency situation.

12. During the audit period, approximately three hundred Barrett Roofing Bonds were issued in New York State and there were sixteen complaints reported on said bonds as of September 15, 1974. The bonds are usually written for twenty year terms. Therefore, the number of claims (and cost of repairs) relating to these bonds will not be ascertainable for many years.

13. A great many of the bonded roofs are for schools, hospitals, churches, public buildings and other buildings which are owned by tax exempt institutions and entities.

#### CONCLUSIONS OF LAW

A. That the Barrett Roofing Bond issued by applicant, Celotex Corporation, is an agreement for the repair or maintenance of real property, receipts from the sale of which are subject to tax under section 1105(c)(5) of the Tax Law.



B. That the applicant, Celotex Corporation, acted in good faith and, therefore, all penalties and interest above minimum are waived; that except as so granted, the application is in all other respects denied; and that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 7, 1973.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER