

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALMOR CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period(s)
March 1, 1973 through February 29, 1976

State of New York
County of Albany

John Huhn, 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 15th day of March, 1979, she served the within
Notice of Determination by ~~(certified)~~ mail upon Almor Corp.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Almor Corp.
c/o Allan Foster
3446 South Main Street
Warsaw, NY

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

Sworn to before me this

15th day of March, 1979.

Marilyn J. Lapineau

John Huhn



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

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

March 15, 1979

Almor Corp.
c/o Allan Foster
3446 South Main Street
Warsaw, NY

Mr. Foster:

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 & 1243** 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,


Joseph Chyrywat
Hearing Examiner

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Application :
of :
ALMOR CORP. : 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, 1973 through :
February 29, 1976. :

Applicant, Almor Corp., 1300 Hiton, Ferndale, Michigan 48220, filed an application 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, 1973 through February 29, 1976 (File No. 16404).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on July 18, 1978 at 2:45 P.M. Applicant appeared by its president, Allan Foster. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

Whether solvents and thinners purchased by applicant for use in its manufacturing process become a physical component part of tangible personal property manufactured for sale, and are thereby exempt from the imposition of sales or use tax.

FINDINGS OF FACT

1. On August 6, 1976 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant in the amount of \$1,597.60, plus penalty and interest, for the period March 1, 1973 through February 29, 1976.

2. The audit by the Sales Tax Bureau disclosed that applicant did not pay tax on the purchase of certain expense items, capital expenditures, utilities for non-production use and solvents and thinners. The only items at issue here were the solvents and thinners. Applicant agreed to and paid tax due of \$2,835.28 on the remaining purchases.

The Sales Tax Bureau took the position that the solvents and thinners were manufacturing supplies consumed by applicant, and were, therefore, subject to tax.

3. Applicant manufactures metal shelving and conveyor check-out counters used in supermarkets and other retail stores. Its main office is located in Warren, Michigan, and the manufacturing plant is in Warsaw, New York.

4. As part of the manufacturing process, paint is applied to the finished product by an electrostatic spray process. As the paint "cures," a chemical reaction takes place and the paint hardens. In an electrostatic process, the solvent and thinners attract the paint to the finished product.

Applicant purchases paint in 55 gallon drums with a chemical formulation of 65% paint compounds or solids and 35% solvents. The solvent content in the paint as purchased is not in sufficient quantity to process the paint through applicant's spray guns. Therefore, solvents and thinners are purchased separately and mixed with the paint to the required formulation before applying it to the finished product.

5. The solvents and thinners used by applicant evaporate during the drying process; however, a portion may remain with the finished product.

6. Applicant contended that the paint could be purchased fully formulated with the proper solvent content and, accordingly, it would not be liable for tax on the solvent in the paint. Applicant maintains that solvent is a necessary ingredient of the paint, regardless of when it is added.

7. Reasonable cause exists for applicant's failure to pay sales or use taxes with respect to the solvents and thinners in issue.

CONCLUSIONS OF LAW

A. That the solvents and thinners purchased by applicant and subsequently mixed with the paint, evaporated during the drying process; therefore, they were not intended to be converted into, nor did they become a component part of the product manufactured

for sale; that the solvents and thinners were intended to and were used to process the paint through applicant's spray guns and attract the paint to the product.

B. That the purchase by applicant of the solvents and thinners does not constitute tangible personal property for resale as such or as a physical component part of tangible personal property, within the meaning and intent of section 1101(b)(4)(i)(A) of the Tax Law.

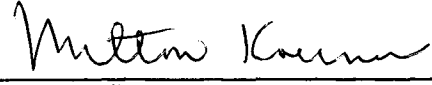
C. That the solvents and thinners purchased by applicant are "supplies" within the meaning and intent of section 1115(a)(12) of the Tax Law and, therefore, subject to New York State sales and use tax.

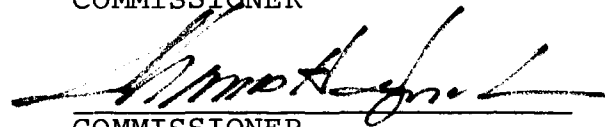
D. That the application of Almor Corp. is granted to the extent that the interest, in excess of the minimum statutory rate, and the penalty imposed pursuant to section 1145(a) of the Tax Law are waived; that the Sales Tax Bureau is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 6, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER